



**CONFIDENTIAL**

# **PRACTICE AND PROCEDURE**

OF THE

## **GOVERNMENT OF INDIA**



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## PREFATORY NOTES.

SINCE the issue of the last edition of this compilation in June 1906 by Mr. Carnduff, the Indian Councils Act, 1909, and the Government of India Act, 1912, have been passed. The rules for the conduct of the executive business of the Government of India made under section 8 of the Indian Councils Act, 1861, have undergone considerable modification; the rules for the conduct of the legislative business of the Council of the Governor General made under section 18 of that Statute have also been amended in several respects to suit the altered conditions brought about by the enlargement of the Legislative Council under the provisions of the Indian Councils Act, 1909; and new rules have been made under the Act of 1909 for the discussion of the annual financial statement and of matters of general public interest and for the asking of questions. The want of a new edition of the compilation has in these circumstances been felt.

The present volume contains the Indian Councils Acts of 1861, 1869, 1871, 1874, 1892 and 1909. the Government of India Acts of 1865, 1869, 1870 and 1912, the Rules of Business of the Governor General's Council both executive and legislative, made under the Indian Councils Acts of 1861 and 1909, the Secretariat Instructions and the Instructions to Governments regarding legislation in local Councils as amended and modified up to date.

The Indian Councils Act, 1904 (4 Edw. 7, c. 26) which merely repeals a portion of the Indian Councils Act, 1874, has not been included.

The Appendices to the last edition have been retained with the exception of Appendix VII for which has been substituted the letter to Local Governments regarding the position of Provincial official members of the Legislative Council of the Governor General. The Forms in Appendix IX have been revised and a few additional forms have been added.

The last edition contained also the Regulations then in force for the nomination of members of the Imperial and the various Provincial Legislative Councils and the Rules for the transaction of legislative business, the discussion of the Budget and the asking of questions in the Provincial Councils. The Regulations

now in force for the nomination and election of members of the Imperial and Provincial Legislative Councils are too bulky to be conveniently included in this volume. Neither these Regulations nor the Rules for the various Provincial Legislative Councils directly relate to the practice and procedure of the Government of India and they have accordingly not been included in this volume.

The notes and the index have been revised and amplified.

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*2nd January, 1913.*

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# PRACTICE AND PROCEDURE

OF THE

## GOVERNMENT OF INDIA.

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### THE INDIAN COUNCILS ACT, 1861.

(24 & 25 Vict., c. 67.)

**An Act to make better provision for the constitution of the Council of the Governor General of India, and for the Local Government of the several Presidencies and Provinces of India, and for the temporary government of India in the event of a vacancy in the office of Governor General.**

[1st August, 1861.]

For the despatch from the Secretary of State (Sir Charles Wood, afterwards Lord Hallifax) transmitting this Statute to the Government of India, see App. 1. As to the date—16th November, 1861—on which it actually came into operation, see the note to the repealed commencement clause, s. 54, *post*.

1. This Act may be cited for all purposes as the Indian Councils Act, 1861.

This Act and the Indian Councils Act, 1892 (55 & 56 Vict., c. 14) may be cited together as the Indian Councils Acts, 1861 and 1892—see the Indian Councils Act, 1892, s. 8, *post*. The Indian Councils Act, 1909 (9 Edw. 7, c. 4) shall be construed with the Indian Councils Acts, 1861 and 1892, and those Acts, the Indian Councils Act, 1869 (32 & 33 Vict., c. 98), the Indian Councils Act, 1871 (33 & 34 Vict., c. 34), the Indian Councils Act, 1874 (37 & 38 Vict., c. 91), the Indian Councils Act, 1904 (4 Edw. 7, c. 26) and the Indian Councils Act, 1909 (9 Edw. 7, c. 4), may be cited together as the Indian Councils Acts, 1861 to 1909—see the Indian Councils Act, 1909, s. 8 (1) *post*. The effect of the Statute of 1909 has been to supersede various provisions of the Statute of 1861 not expressly repealed—see Legislative Department's U. O. No. 755 of 1909. As to the provisions of these Statute generally, see Ilbert's *Government of India*, pp. 99 to 108 and the supplementary chapter. The Government of India Act, 1912 (2 & 3 Geo. 5, c. 6) (*post*), has extended and further modified these provisions.

Enactments  
continued in  
force.

2. <sup>1</sup> \* \* \* \* All other enactments whatsoever now in force with relation to the Council of the Governor General of India, or to the Councils of the Governors of the respective Presidencies of Fort St. George and Bombay, shall, save so far as the same are altered by or are repugnant to this Act, continue in force, and be applicable to the Council of the Governor General of India and the Councils of the respective Presidencies under this Act.

Composition  
of Governor  
General's  
Executive  
Council.

3. There shall be five Ordinary Members of the said Council of the Governor General, three of whom shall, from time to time, be appointed <sup>2</sup> \* \* \* \* from among such persons as shall have been, at the time of such appointment, in the service in India of the Crown or of the Company and the Crown for at least ten years, and if the person so appointed shall be in the military service of the Crown, he shall not, during his continuance in office as a Member of Council, hold any military command, or be employed in actual military duties, and the remaining two, one of whom shall be a barrister or a member of the Faculty of Advocates in Scotland, of not less than five years' standing, shall be appointed from time to time by Her Majesty by warrant under Her Royal Sign Manual ;

and it shall be lawful for the Secretary of State in Council to appoint the Commander-in-Chief of Her Majesty's Forces in India to be an Extraordinary Member of the said Council, and such Extraordinary Member of Council shall have rank and precedence at the Council Board next after the Governor General.

The "Governor General in Council" constitutes the "Government of India"—see the note to r. 12 of the *Rules of Business, post*.

The Governor General himself is appointed by the Crown by warrant under the Royal Sign Manual under s. 29 of the Government of India Act, 1858 (21 & 22 Vict., c. 106). The designation "Viceroy," although it is most frequently used in ordinary parlance, has no statutory authority, and it has never been employed by the legislature. It originated in the well known Proclamation of 1858, which announced the assumption of the administration of India by the Crown, and, in doing so, referred to Lord Canning as the "first Viceroy and Governor General." But the warrants appointing Lord Canning's successors have never styled them "Viceroys."

The number of Ordinary Members may be, and has been, increased to six—see ss. 1 and 2 of the Indian Councils Act, 1874 (37 & 38 Vict., c. 91) *post*. The six Members are, under existing arrangements, in charge, respectively, of (1) the Home Department, (2) the Finance Department, (3) the Department of Revenue and Agriculture and the Public Works

<sup>1</sup> The earlier part of this section repealed certain enactments, and was itself repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict., c. 19).

<sup>2</sup> The words "by the Secretary of State for India in Council, with the concurrence of a majority of Members present at a meeting," were repealed by the Statute Law Revision Act, 1878 (41 & 42 Vict., c. 79). S. 8 of the Government of India Act, 1869, *post*, provides that the appointments of all Ordinary Members of Council shall be made by His Majesty by warrant under the Royal Sign Manual.

Department, (4) the Department of Commerce and Industry and the Railway Department, (5) the Department of Education, and (6) the Legislative Department. The Governor General himself takes the portfolio in the Foreign Department, and the Commander-in-Chief, in the capacity of Extraordinary Member, is at the head of the Army Department. See rr. 1 and 2 of the *Rules of Business, post*.

The Commander-in-Chief is appointed by the Secretary of State under s. 25 of the East India Company Act, 1793 (33 Geo. 3, c. 52), read with s. 3 of the Government of India Act, 1858 (21 & 22 Vict., c. 106), and provisional appointments to the office are made by the like authority under s. 27 of the same Statute. The Secretary of State (Lord George Hamilton) in his despatch No. 66 (Military), dated the 30th June, 1898, intimated that he did not propose in future to appoint an officer temporarily acting as Commander-in-Chief to be an Extraordinary Member of Council; but the arrangement under which the Army Department is now administered, was not then in view.

If the Governor General's Council assembles within either of the Presidencies of Fort St. George or Bombay, the Governor of such Presidency shall act as an extraordinary Member of Council—see s. 9 below, and the Governor of the Presidency of Fort William in Bengal, within the limits of the presidency has all the rights, duties, functions and immunities, which are possessed by the Governors of the other two presidencies. See Government of India Act, 1912 (2 & 3 Geo. 5, c. 6), s. 1, *post*.

The place here assigned to the Commander-in-Chief is with reference to the Executive Council only. As to the position of the Commander-in-Chief with reference to the local Councils of Madras, Bombay and Bengal, see the notes to s. 26 below.

The Commander-in-Chief's salary is fixed by s. 35 of the Government of India Act, 1853 (16 & 17 Vict., c. 95), at a maximum of Rs. 1,00,000 per annum. S. 32 of the East India Company Act, 1793 (33 Geo. 3, c. 52), provides that no Commander-in-Chief shall be entitled to any salary or emolument in respect of his being a Member of Council unless the same shall be specially granted by the Court of Directors, *i.e.*, now by the Secretary of State—see s. 3 of the Government of India Act, 1858 (21 & 22 Vict., c. 106), but the latter part of s. 35 of the Statute of 1853 seems to supersede s. 32 of the Statute of 1793, and to limit the salary absolutely to that fixed by the former.

In practice the tenure of office of an Ordinary Member of Council (whether of the Governor General's Council or of that of the Governor of Madras, Bombay or Bengal) is limited to five years. This arose, no doubt, from the circumstance that Hastings and his Councillors were, by s. 10 of the East India Company Act, 1772 (13 Geo. 3, c. 63), otherwise known as "the Regulating Act," appointed by name for that period. But as regards their successors no such limit is fixed either by Statute or by the warrants of appointment issued to them, and Sir H. S. Maine's term as Law Member was in fact extended beyond the five years. Similarly, the term of office of Sir A. Arundel as Home Member was extended by about five months. The appointments of Governor General, Governors, Lieutenant-Governors and Commander-in-Chief are also similarly limited by custom.

In computing the quinquennial period, it has been laid down that any time during which a Member (not having himself been granted leave) draws less than the full pay of the appointment—a condition of things which can arise only in the case of a person appointed to officiate during the absence of a Member on leave—should be excluded. Otherwise the term should be reckoned from the date when the Member first entered upon his duties, whether as a temporary Member appointed in India or after the issue of His Majesty's warrant of appointment. See despatch from the Secretary of State (Lord George Hamilton), No. 92 (Public), dated the 26th July, 1901.



For form of notification appointing an Ordinary Member of Council, see App. IX, No. 1, *post*. For digest and critical notes, see Sir C. Ilbert's *Government of India*, pp. 176 to 180 and supplementary chapter.

Salaries of  
Ordinary  
Members of  
Executive  
Council, etc.

4. The present Ordinary Members of the Council of the Governor General of India shall continue to be Ordinary Members under and for the purposes of this Act, and it shall be lawful for Her Majesty <sup>1</sup> \* \* \* \* to appoint by warrant as aforesaid an Ordinary Member of Council to complete the number of five hereby established ;

And there shall be paid to such Ordinary Members, and to all other Ordinary Members who may be hereafter appointed, such amount of salary as may from time to time be fixed for Members of the Council of the Governor General by the Secretary of State in Council with the concurrence of a majority of Members of Council present at a meeting ;

and all enactments of any Act of Parliament or law of India respecting the Council of the Governor General of India and the Members thereof shall be held to apply to the said Council as constituted by this Act, except so far as they are repealed by or are repugnant to any provisions of this Act.

The annual salaries of the Governor General and of an Ordinary Member of Council were, by s. 76 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), fixed at "two hundred and forty thousand sicca rupees" and "ninety-six thousand sicca rupees," respectively, subject to such reduction as the Court of Directors, with the sanction of the Board of Control, might at any time think fit. The power to reduce had been exercised more than once, and the salary stood at Rs. 76,800 *per annum* in 1894, when the Secretary of State, acting with the advice of the Law Officers on the view—formerly regarded as doubtful—that the power to reduce involved a power to raise subsequently increased it to Rs. 80,000. See para. 6 of despatch from the Secretary of State (Lord George Hamilton), No. 69 (Financial), dated the 7th April, 1898. The maximum salary of a Commander-in-Chief is like that of a Lieutenant-Governor, fixed at "one hundred thousand Company's rupees" *per annum* by s. 35 of the East India Company Act, 1853 (16 & 17 Vict., c. 95). "Sicca" signifies a seal or die, and the "Sicca rupee" was the Mughal rupee, weighing 192 grs., of which 176 were pure silver. The exchange value was two shillings and two pence.

As to leave of absence, see s. 26 below and the note thereto.

As to allowances for equipment and voyage, see the Indian Salaries and Allowances Act, 1880 (43 & 44 Vict., c. 3), s. 3. That Statute empowers the Secretary of State in Council to fix, alter or abolish such allowances in the cases of the Governor General and the Members of his Council, the Governors of Madras and Bombay and the Members of their Councils, the Commander-in-Chief of the Forces in India, and the Bishops and Archdeacons of Calcutta, Madras and Bombay. The Statute applies also to the Governor of Bengal and the Members of his Council: see the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6), s. 1. For the allowances now fixed, see the *Civil Service Regulations*, Art. 1087 and App. 28.

This section, except in so far as it relates to salaries, is spent.

<sup>1</sup> The words "on the passing of this Act," were repealed by the Statute Law Revision Act, 1892 (55 & 56 Vict., c. 19).

5. It shall be lawful for the Secretary of State in Council, with the concurrence of a majority of Members present at a meeting, and for Her Majesty, by warrant as aforesaid, respectively, to appoint any person provisionally to succeed to the office of Ordinary Member of the Council of the Governor General, when the same shall become vacant by the death or resignation of the person holding the said office, or on his departure from India with intent to return to Europe, or on any event and contingency expressed in any such provisional appointment, and such appointment again to revoke ;

Provisional appointments of Ordinary Members of Executive Council.

but no person so appointed to succeed provisionally to such office shall be entitled to any authority, salary or emolument appertaining thereto until he shall be in the actual possession of such office.

All permanent appointments are now made by His Majesty by warrant under the Royal Sign Manual—see s. 8 of the Government of India Act, 1869 (32 & 33 Vict., c. 97), *post*. As to temporary appointments made in India. see s. 27, *post*.

For form of notification making a provisional appointment, see App. IX, No. 2, *post*. For digest and notes, see *Ilbert*, p. 229.

6. Whenever the said Governor General in Council shall declare that it is expedient that the said Governor General should visit any part of India unaccompanied by his Council, it shall be lawful for the said Governor General in Council, previously to the departure of the said Governor General, to nominate some Member of the said Council to be President of the said Council in whom, during the time of such visit, the powers of the said Governor General in assemblies of the said Council shall be reposed, except that of assenting to or withholding his assent from, or reserving for the signification of Her Majesty's pleasure, any law or regulation as hereinafter provided ;

Provision for absence of Governor General in other parts of India.

and it shall be lawful in every such case for the said Governor General in Council, by an order for that purpose to be made, to authorize the Governor General alone to exercise all or any of the powers which might be exercised by the said Governor General in Council in every case in which the said Governor General may think it expedient to exercise the same, except the power of making laws or regulations.

Ss. 54 and 55 of the East India Company Act, 1793 (33 Geo. 3, c. 52), provide that the Governor General when separated from his Council, may, if he judges it necessary, himself issue orders to Local Governments or officers, and that such powers may be suspended by the authorities in London. These provisions are still unrepealed, but they may be regarded as having been superseded by this section—see *Ilbert*, p. 185.

A President in Council was last appointed under this section on the occasion of the late Lord Dufferin's visit to Burma in 1886,

Provision for  
absence of  
Governor  
General  
or President  
from meeting  
of Executive  
Council.

7. Whenever the Governor General, or such President so nominated as aforesaid, shall be obliged to absent himself from any meeting of Council (other than meetings for the purpose of making laws and regulations, as hereinafter provided), owing to indisposition or any other cause whatsoever, and shall signify his intended absence to the Council, then and in every such case the senior Member for the time being who shall be present at such meeting shall preside thereat, in such manner, and with such full powers and authorities during the time of such meeting as such Governor General or President would have had in case he had been present at such meeting :

Provided always that no Act of Council made at any such meeting shall be valid to any effect whatsoever unless the same shall be signed by such Governor General or President, respectively, if such Governor General or President shall at the time be resident at the place at which such meeting shall be assembled, and shall not be prevented by such indisposition from signing the same :

Provided always that in case such Governor General or President, not being so prevented as aforesaid, shall decline or refuse to sign such Act of Council, he, and the several Members of Council who shall have signed the same, shall mutually exchange with, and communicate in writing to, each other the grounds and reasons of their respective opinions, in like manner and subject to such regulations and ultimate responsibility as are by the East India Company Act, 1793, sections 47, 48, 49, 50 and 51, provided and described in cases where such Governor General shall, when present, dissent from any measure proposed or agitated in the Council.

33 Geo. 3, c.  
352.

The senior *Ordinary* Member is, no doubt, intended ; and so the section has in practice been applied.

The Vice-President appointed under the Indian Councils Act, 1909, s. 4, is to be deemed to be the Senior Member of Council ; but the Senior Ordinary Member present would probably still be entitled to preside at meetings of the Executive Council when the Vice-President also is absent—see the Hon'ble Mr. Sinha's note, Legislative Department Proceedings, Feb. 1910, Nos. 1—7 ; the opinion of the Hon'ble Mr. Sinha has recently been re-affirmed by the Hon'ble Member and the Secretary in the Legislative Department : see notes dated 20th and 21st July 1912 in the Home Department Proceedings relating to the amendment of the Council Regulations. See also notes under s. 15 below.

The following are the sections of the Charter Act of 1793 here referred to :—

" 47. And whereas it will tend greatly to the strength and security of the British possessions in India and give energy, vigor and despatch to the measures and proceedings of the Executive Government within the respective Presidencies, if the Governor General of Fort William in Bengal and the several Governors of Fort St. George and Bombay were vested with a discretionary power of acting without the concurrence of their respective Councils or forbearing to act according to their

opinions in cases of high importance and essentially affecting the public interest and welfare, thereby subjecting themselves personally to answer to their country for so acting or forbearing to act :

“ Be it enacted that, when and so often as any measure or question shall be proposed or agitated in the Supreme Council at Fort William in Bengal or in either of the Councils of Fort St. George and Bombay, whereby the interests of the said United Company or the safety or tranquillity of the British possessions in India or any part thereof are or may in the judgment of the Governor General or of the said Governors respectively, be essentially concerned or affected, and the said Governor General or such Governors respectively shall be of opinion that it will be expedient either that the measures so proposed or agitated ought to be adopted or carried into execution, or that the same ought to be suspended or wholly rejected, and the several other Members of such Council then present shall differ in and dissent from such opinion, the said Governor General or such Governor and the other Members of the Council shall, and they are hereby directed forthwith mutually to, exchange with and communicate in Council to each other, in writing under their respective hands (to be recorded at large on their secret consultations), the respective grounds and reasons of their respective opinions ;

“ and if after considering the same the said Governor General or such Governor respectively, and the other Members of the said Council, shall severally retain their opinions, it shall and may be lawful to and for the said Governor General in the Supreme Council of Fort William or either of the said Governors in their respective Councils, to make and declare any order (to be signed and subscribed, by the said Governor General or by the Governor making the same) for suspending or rejecting the measure or question so proposed or agitated, in part or in the whole, or to make and declare such order and resolution for adopting and carrying the measure so proposed or agitated into execution, as the said Governor General or such Governors in their respective Councils shall think fit and expedient ;

“ which said last-mentioned order and resolution so made and declared shall be signed as well by the said Governor General or the Governor so making and declaring the same as by all the other Members of the Council then present, and shall, by force and virtue of this Act, be as effectual and valid to all intents and purposes as if all the said other Members had advised the same or concurred therein ;

“ and the said Members of Council, and all officers, civil and military, and all other persons concerned shall be and they are hereby commanded, authorized and enjoined to be obedient thereto, and to be aiding and assisting in their respective stations in the carrying the same into execution.

“ 48. And that the Governor General or Governor who shall declare and command any such order or resolution to be made and recorded without the assent or concurrence of any of the other Members of Council shall alone be held responsible for the same and the consequences thereof.

“ 49. Provided always that nothing in this Act contained shall extend or be construed to extend to give power to the said Governor General of Fort William in Bengal, or to either of the said Governors of Fort St. George and Bombay, respectively, to make or carry into execution any order or resolution which could not have been lawfully made and executed with the concurrence of the Councils of the respective Governments or Presidencies, anything herein contained to the contrary notwithstanding.

“ 50. Provided, also, that nothing in this Act contained shall extend or be construed to extend to give any discretionary power of acting or forbearing to act without the concurrence of the other Members of Council unto any person on whom the said office of Governor General or

the said office of Governor, respectively, shall happen to devolve by the death or resignation of any Governor General or Governor for the time being, respectively, or unto any Deputy Governor General, unless such person shall have been provisionally appointed to succeed to such respective office by the said Court of Directors, or unless and until such person shall have been or shall be confirmed in the said office;

"and that in the meantime all orders, resolutions and other acts and things in such Presidencies shall be determined by the voice of the major part in number of the Governor General and Councillors or Governor and Councillor present at the making or doing thereof, such Governor General or Governor having on any equality of voices a casting vote, and not otherwise or in any other manner, anything in this Act contained to the contrary notwithstanding.

"51. Provided, also that nothing herein contained shall be construed to give power or authority to the Governor General of Fort William in Bengal, or either of the Governors of Fort St. George and Bombay, respectively, to make or carry into execution any order or resolution against the opinion or concurrence of the Councillors of their respective Governments in any matter which shall come under the consideration of the said Governor General and Governors in Council, respectively, in their judicial capacity, or to make, repeal or suspend any general rule, order or regulation for the good order and civil government of the said United Company's settlements, or to impose of his own authority any tax or duty within the said respective governments or presidencies."

These provisions are still unrepealed; but ss. 47, 48 and 49 have been superseded, as regards the Governors General, by s. 5 of the Government of India Act, 1870 (33 Vict., c. 3), *post*. Subject to the power of the Governor General to override his Executive Council, the majority of votes in that Council prevails; and where there is an equality of voices, the Governor General has a casting vote. The quorum is the Governor General and one Ordinary Member—see s. 8 of the East India Company Act, 1772 (13 Geo. 3, c. 63), known also as "the Regulating Act," and s. 48 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), known also as the Charter Act of 1833, which run thus:—

*Regulating Act, s. 8.* "In all cases whatsoever wherein any difference of opinion shall arise upon any question proposed in any consultation, the said Governor General and Council shall be bound and concluded by the opinion and decision of the major part of those present: and, if it shall happen that, by the death or removal, or by the absence, of any of the Members of the said Council, such Governor General and Council shall happen to be equally divided, then and in every such case the said Governor General, or, in his absence, the eldest Councillor present shall have a casting voice, and his opinion shall be decisive and conclusive."

*Charter Act of 1833, s. 48.*—"Provided always \* \* \* \* \*  
\* \* \* that all other functions of the said Governor General in Council may be exercised by the said Governor General and one or more Ordinary Member or Members of Council, and that in every case of difference of opinion at meetings of the said Council where there shall be an equality of voices, the said Governor General shall have two votes or the casting vote."

As to legislative meetings, see s. 15 below.

8. It shall be lawful for the Governor General from time to time to make rules and orders for the more convenient transaction of business in the said Council;

and any order made or act done in accordance with such rules and orders (except as hereafter provided respecting

Power of  
Governor  
General to  
make rules  
for conduct  
of executive  
business.

laws and regulations) shall be deemed to be the order or act of the Governor General in Council.

This power—as to which see s. 8 of the despatch from the Secretary of State of the 9th August, 1861, App. I, *post*,—is conferred on the Governor General in person, and is, no doubt, subject to the general power of control secured to the Secretary of State by s. 80 of the Government of India Act, 1833 (3 & 4 Will 4, c. 85), read with ss. 1 to 3 of the Government of India Act, 1858 (21 & 22 Vict., c. 106). As to this, and also as to whether s. 47 of the Charter Act of 1833—which directed the Court of Directors to make rules to regulate the procedure of the Governor General in Council—is superseded, see Legislative Department's U. O. No. 795 of 1905. For the existing rules see *Rules of Business, post*. For a similar power conferred on the Governors of Madras and Bombay, see s. 28, *post*. The Indian Councils Act, 1909 (9 Edw. 7, c. 4), s. 3 (see *post*) confers a similar power on Lieutenant-Governors for whom executive councils may be constituted under that section. The Governor of Bengal has the same powers as are possessed by the Governors of Madras and Bombay. See the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6), s. 1, *post*.

9. The said Council shall, from time to time, assemble at such place or places as shall be appointed by the Governor General in Council within the territories of India ;

Council  
where to  
assemble.

and as often as the said Council shall assemble within either of the Presidencies of Fort St. George or Bombay, the Governor of such Presidency shall act as an extraordinary Member of Council ;

and as often as the said Council shall assemble within any other division, province or territory having a Lieutenant-Governor, such Lieutenant-Governor shall act as an additional Councillor at meetings of the Council for the purpose of making laws and regulations only, in manner hereinafter provided.

The expression “Additional Councillor” is here used instead of “Additional Member,” which is the term employed elsewhere in connection with the Legislative Councils of the Governor General and the Governors. See note to s. 45, *post*.

An Extraordinary Member of the Executive Council is—see s. 10 below—also a Member of the Legislative Council ; so that, were legislative meetings to be held in Madras or Bombay, the Governor would be entitled to attend and under the Government of India Act, 1912, s. 1 (2 & 3 Geo. 5, c. 6) (*post*), the Governor of Bengal would have a similar right.

The Governor General's Executive Council now assembles regularly at the headquarters of the Government of India which, until the recent transfer of the capital to Delhi, were Calcutta and Simla. It appears to have been convened at Allahabad in April, 1871, and at Agra in November, 1873, and on each of these occasions, legislative meetings—as to which see s. 17, *post*, were held. It was see Home Department's Notification No. 3571, dated the 4th November, 1905, in the *Gazette of India*, 1905, Pt. I, p. 813—directed to assemble at Bombay temporarily in order that Lord Minto might formally “take his seat in Council” immediately after the departure of Lord Curzon. For form of convening notification, see App. IX, No. 5, *post*.

The concluding provision has been re-enacted and extended to Chief Commissioners by s. 3 of the Government of India Act, 1870 (33 Vict., c. 3), *post*.

Additional  
Members to  
be sum-  
moned for  
legislation.

10. For the better exercise of the power of making laws and regulations vested in the Governor General in Council, the Governor General shall nominate, in addition to the Ordinary and Extraordinary Members above mentioned, and to such Lieutenant-Governor in the case afore-said, such persons <sup>1\*</sup> \* \* \* \* as to him may seem expedient, to be Members of Council for the purpose of making laws and regulations only, and such persons shall not be entitled to sit or vote at any meeting of Council, except at meetings held for such purpose:

Provided that not less than one-half of the persons so nominated shall be non-official persons, that is, persons who, at the date of such nomination, shall not be in the civil or military service of the Crown in India; and that the seat in Council of any non-official Member accepting office under the Crown in India shall be vacated on such acceptance.

The "laws and regulations" made by the Governor General in Council under this Statute are styled "Acts," the term "Regulation" being now reserved for an enactment made by the Executive Government under the Government of India Act, 1870 (33 Vict., c. 3), *post*. Such enactments may be regarded as survivals of the system under which the Regulations of the Bengal, Madras and Bombay Codes were made in exercise of the quasi-legislative authority entrusted to the executive, first by the East India Company's early charters, and afterwards by Act of Parliament. By the Charter Act of 1833 the old series of executive orders was closed, and the era of "Acts" was introduced through the constitution of a regular legislature, which began its labours in 1834. The expression "laws and regulations" is, however, still retained in describing the legislature; for, in s. 23 of his despatch of the 9th August, 1861—see App. I, *post*—the Secretary of State (Sir C. Wood, afterwards Lord Halifax) requested that "in recording its proceedings each Council should be designated according to the form followed in the Statute of 1861, and no other." The term "Legislative Council" has, however, now received statutory recognition as meaning the Council for the purpose of making laws and regulations: see 9 Edw. 7, c. 4, s. 1 (1).

The constitution of the Legislative Council of the Governor General, as also of the various provincial Legislative Councils, has undergone material modification by the Indian Councils Act, 1909 (9 Edw. 7, c. 4) which was brought into operation on the 15th November, 1909, and the Regulations made thereunder. By the Statute of 1909 Additional Member or Members, as the case may be, of these Councils instead of being all nominated, as was provided by the Indian Councils Acts, 1861 and 1892, include Members so nominated and also Members elected in accordance with the Regulations made under it, and references in the Acts of 1861 and 1892 to the Members so nominated and their nomination shall be construed as including references to the Members so elected and their election—see 9 Edw. 7, c. 4, s. 1 (1) and the notes thereto, below.

<sup>1</sup> The words "not less than six nor more than twelve in number" were repealed by the Indian Councils Act, 1909 (9 Edw. 7, c. 4).

For the enlargement of the functions of the Legislative Councils, see notes under s. 19 below

The number of Additional Members of the Legislative Council of the Governor General is now not more than sixty, and shall ordinarily be that number—see s. 1 (1) of the Indian Councils Act, 1909, (9 Edw. 7, c. 4), and Regulations thereunder; but this is exclusive of a Lieutenant-Governor or Chief Commissioner when sitting *ex-officio* in pursuance of s. 3 of the Government of India Act, 1870 (33 Vict., c. 3), *post*. The representation of non-officials is further safeguarded by Reg. I of the Regulations made under the Statute of 1909, which provide that not more than twenty-eight of the nominated Additional Members shall be officials, subject to the proviso that it shall not be lawful for the Governor General to nominate so many non-official persons that the majority of all the Members of the Council shall be non-officials.

As to the allowances of Additional Members, see Resolution of the Government of India, Finance Department, No. 3274 C. S. R., dated 31st May, 1911, in Legislative Department, Pros. July 1911, Nos. 7—8: also the following Article of the *Civil Service Regulations* :—

“Article 542.”—A public officer nominated to be an Additional Member of the Imperial Legislative Council shall receive, while on deputation with the Council, the pay or salary which he would have drawn from time to time if he had not been so deputed. He is, in addition, entitled to draw the allowances admissible under Article 1148.\*

An Official Additional Member selected for his knowledge of a particular Province is not the representative or mouthpiece of the administration of that Province; and the Local Government and its subordinate officers do not correspond with him officially on matters of legislation. See s. 3 of Legislative Department's letter to the Government of Bengal, No. 1527, dated the 13th December, 1878—*Selection of Papers relating to the Constitution and Functions of the Indian Legislative Council*, at p. 278.

In all matters in which the question is put to the vote official Additional Members are required to support the Government, both by speech and vote, or to resign their seats—see Home Department Pros. 1900 Misc., Con. File No. XVI and Mr. Macpherson's note, dated the 9th August, 1911, in Legislative Department Pros. (Confidential), September, 1911, Nos. 34—39; and although, previous to the enlargement of the Council under the Indian Councils Act, 1909 (9 Edw. 7, c. 4), a certain amount of latitude of speech was enjoyed by official Additional Members from the Provinces at the Budget debate, their position in regard to such debates must now be considered to be the same as their position in regard to other debates where it is well settled that they are bound to support the Government unreservedly. See Government of India's letters Nos. 2589 and 2590, dated the 4th September 1911, to the Governments of Bombay and Madras, respectively,—Legislative Department Pros. September, 1911, Nos. 34 - 39, *ibid*, January, 1912, Nos. 51—55 (Confidential).

The expression “non-official persons” is apparently intended to indicate persons independent of the executive Government; and taking this view, the Advocate-General (Mr. Woodroffe) advised, on the 24th June, 1899, that the description covered officials of a High Court, such as an Official Trustee, an Official Assignee, and a Clerk of the Crown, appointed by a Chief Justice. Mr. Woodroffe also advised, on the 29th idem, that the “civil service of the Crown in India” referred to in the section meant the Covenanted Civil Service of India, and that the word “official” meant a person in either the civil or the

\* Article 1148 reproduces the Resolution No. 3274 C. S. R., mentioned above.



military service of the Crown in India. But a different opinion was obtained from several other Counsel in Calcutta—see Home Department's Pros. (Public), July, 1899, Nos. 410—453. See also the ruling given by the Law Member (Mr. Sinha) that the expression "the Civil Service of the Crown in India" does not relate exclusively to the covenanted Civil Service of India, but is applicable to all persons in the service of the Crown—other than persons in military service, and that a Government pleader or a public prosecutor must be regarded as an official person so long as he holds office as such—Legislative Department's unofficial No. 78 of 1910.

Sir A. Miller (Law Member), differing from Sir P. Hutchins (Home Member) and others, held the opinion that a Sheriff in India is not qualified to sit as a non-official Additional Member. The words "office under the Crown" have in England a technical meaning, implying conferment by personal delivery of a seal or other symbol, or by patent, commission or warrant under the Royal Sign Manual. But they can scarcely be given so restricted a sense here. See Legislative Department's Un-official Reference No. 774 of 1900. The office of Advocate-General is, of course, an office under the Crown, and the Advocate-General can sit only as an official.—See Legislative Department's B. Pros., December, 1899, Nos. 118—120.

For forms of notifications nominating or publishing the election of Additional Members, see Appendix IX, Nos. 7 and 8, *post*.

Term of appointment of Additional Member.

11. Every Additional Member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations \* \* \* \*

The provisions relating to the term of office of Additional Members are now contained in the Regulations made under the Indian Councils Act, 1909 (9 Edw. 7, c. 4)—see s. 1 (2) of the Statute *post*, and Reg. X of the Regulations.

The functions of the Legislative Council were enlarged by certain provisions of the Indian Councils Act, 1892 (55 & 56 Vict., c. 14), which were repealed by the Act of 1909 [9 Edw. 7, c. 4] under which certain classes of business other than the making of laws and regulations may be transacted at meetings of the Legislative Council; as to whether the Council may be summoned to meet merely to transact any such class of business, see note under s. 38, *below*.

The practice is to summon the Members at the beginning of each session. As to the supply of agenda lists, see *post*, r. 35 of *Rules of Legislative Business*. For form of summons, see App. IX, No. 10, *post*.

When a ruling Chief is an Additional Member of Council, the summons addressed to him should be forwarded to the Local Government under whose political control the Chief is, with a request for its immediate delivery to him, a copy of the letter to the Local Government and of the summons being forwarded to the Foreign Department.—Legislative Department U. O. No. 363 of 1904.

The latest revised orders of the Governor General regarding the attendance of official and non-official Members at meetings of the Legislative Council are as follows:

"All official Members are expected to attend every meeting of the Council, unless they have obtained leave of absence from the President. All applications for leave should be forwarded to the Secretary in the Legislative Department, who will communicate His Excellency's orders thereon.

"Non-official Members who are unable to attend any meeting of the Council are, in order to facilitate the arrangement of business, requested

<sup>1</sup>The words "for the term of two years from the date of such nomination" were repealed by the Indian Councils Act, 1909 (9 Edw. 7, c. 4).

to give sufficient notice to the Secretary in the Legislative Department of their intention to absent themselves from any meeting.

"The attention of all Members is drawn, however, to s. 4 of the Indian Councils Act, 1892."—Government of India, Legislative Department Circular No. IX, dated the 20th April 1912, to all Additional Members.

Absence for two months renders the seat of an Additional Member liable to be declared vacant—see s. 4 of the Indian Councils Act, 1892: there is no other sanction to enforce any orders that non-official Members should apply for leave.

12. It shall be lawful for any such Additional Member of Council to resign his office to the Governor General, and, on acceptance of such resignation by the Governor General, such office shall become vacant. Resignation of Additional Member.

For form of notification accepting the resignation of an Additional Member, see App. IX, No. 9, *post*.

13. [*Rep. by Indian Councils Act, 1892 (55 & 56 Vict., c. 14), s. 4.*]

This section provided for the filling up of vacancies in the number of Additional Members; provision for this is now contained in the Regulations made under the Indian Councils Act, 1909 (9 Edw. 7, c. 4)—see s. 1 (2) of that Statute, *post*, and Reg. XI of the Regulations.

14. No law or regulation made by the Governor General in Council, in accordance with the provisions of this Act, shall be deemed invalid by reason only that the proportion of non-official Additional Members hereby provided was not complete at the date of its introduction to the Council or its enactment. No law to be invalid by reason of incomplete number of non-official Members.

*Cf. s. 33, post, as to local Councils.*

15. In the absence of the Governor General and of the President, nominated as aforesaid, the senior Ordinary Member of the Council present shall preside at meetings of the Council for making laws and regulations; President, quorum, and casting vote.

1\*            \*            \*            \*            \*

and in every case of difference of opinion at meetings of the said Council for making laws and regulations where there shall be an equality of voices, the Governor General, or in his absence the President, and in the absence of the Governor General and President, such senior Ordinary Member of Council there presiding, shall have two votes or the casting vote.

As to the nomination of a President during the absence of the Governor General elsewhere in India, see s. 6, *ante*.

The Vice-President appointed under s. 4 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4), is to be deemed to be the senior Ordinary Member.

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<sup>1</sup>The words "and the power of making laws and regulations vested in the Governor General in Council shall be exercised only at meetings of the said Council at which such Governor General or President or some Ordinary Member of Council and six or more Members of the said Council (including under the term Members of the Council such Additional Members as aforesaid), shall be present," were repealed by the Indian Councils Act, 1909 (9 Edw. 7, c. 4)

The number of Additional Members required to form a quorum is laid down in the Regulations made under the Indian Councils Act, 1909 (9 Edw. 7, c. 4)—see s. 1 (2) of the Statute and Reg. XIII.

The question whether the senior Ordinary Member present is entitled to preside at meetings of the Legislative Council when the Vice-President also is absent, or whether such senior Member is entitled to preside at discussions of annual financial statements or of matters of general public interest, when the Vice-President and the Member appointed to preside at such discussions are absent was left in some doubt by Regulation XIII of the Regulations for the nomination and election of Additional Members, which required that the functions of the Legislative Council can be exercised only at meetings at which the Governor General, or the President or the Vice-President, or, in the case of the discussions referred to above, the Member appointed to preside, and fifteen or more Members of the Council of whom eight at least shall be Additional Members, are present, on the assumption that the senior Ordinary Member as such, had no longer any right to preside at any meeting of the Legislative Council. The Hon'ble Mr. S. P. Sinha held this assumption to be founded on a misunderstanding of the effect of s. 4 of the Act of 1909 and noted that Reg. XIII referred to should be revised; Legislative Department Pro., 1910, February, Nos. 1-7; and this view has been re-affirmed in the Legislative Department: *see* notes under s. 7 *ante*. The Regulation has since been amended.

The Member appointed under rule made under s. 5 (2) of the Indian Councils Act, 1909 (see below) cannot preside at a meeting for the transaction of legislative business,—Legislative Department U. O. 644 of 1909.

16. [*Rep. by the Statute Law Revision Act, 1892 (55 & 56 Vict., c. 19).*]

This section provided for the first meeting for making laws and regulations and the exercise of legislative powers until that meeting. It was repealed as being spent.

Power to appoint and adjourn legislative meetings.

17. It shall be lawful for the Governor General in Council from time to time to appoint all <sup>1</sup>\* times and places of meeting of the Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn, or from time to time to authorize such President or senior Ordinary Member of Council in his absence to adjourn, any meeting for the purpose of making laws and regulations from time to time and from place to place.

As to whether a meeting may be summoned when there is no strictly legislative business to be brought forward, *see* note under s. 38, *below*.

The Vice-President appointed under s. 4 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4), is to be deemed to be the senior Ordinary Member. *See* note under s. 15 above.

It was intended that the Legislative Council "should not sit permanently for the purpose of making laws and regulations, but should be called together by summons from the head of the Government when projects of law, prepared by the proper officers under the supervision of the Executive Government, are ready for discussion. "It is probable," wrote Sir C. Wood, "that, by adopting this course, Bills will come before the Council better prepared than when hurriedly framed for a Council in Session, and will be better considered by the

<sup>1</sup> The word "other" was repealed by 55 & 56 Vict., c. 19 (S. L. R.).

Council when brought before them, and thus much unnecessary legislation will be avoided, and much public time saved. The adoption of this plan, moreover, will be necessary to secure the services of Native gentlemen at a distance, and of those persons whose time, like that of members of the mercantile communities of the Presidency towns, is much occupied with their own private engagements." See s. 21 of the despatch from the Secretary of State, dated the 9th August, 1861, App. I, *post*.

Till the recent transfer of the capital to Delhi, the practice was for the Legislative Council to assemble in Calcutta in December or January, to be adjourned *sine die* in March, to assemble again at Simla, and to be once more adjourned indefinitely in October or November. Adjournments of the Legislative Council during a Session are made under Rule 6 of the rules made under s. 18 of the Act (see below). It has, however, assembled on two occasions elsewhere—once at Allahabad in April, 1871, and once at Agra in November, 1873, when there were three meetings. For form of convening notification, see App. IX, No. 6, *post*. For digest, see *Ilbert*, p. 198.

The question of legislation at the summer capital has formed the subject of correspondence with the Secretary of State—see App. IV, *post*. The result of the orders passed seems to be that only five classes of legislative business ought, except in cases of great urgency, to be taken up in Simla, and these may be thus summarised:—

- (a) the passing of purely local laws;
- (b) the gaining of a stage in important measures when discussion in Council is not immediately required;
- (c) the passing of Bills which, having been settled after full discussion in Calcutta, are passed without any alteration in substance;
- (d) the passing of petty measures which could neither excite nor be improved by discussion; and
- (e) the passing of Consolidation Bills and Bills repealing obsolete enactments.

The following are examples of legislation actually effected at Simla:—

Central Provinces Additional Commissioners Act, 1896.	Indian Articles of War Amendment Act, 1894.
Central Provinces Land-revenue Act, 1898.	Marriages Validation (Bangalore) Act, 1895.
Central Provinces Tenancy Act, 1898.	Ex-King Thebaw's Act, 1895.
Central Provinces Court of Wards Act, 1899.	Currency Conversion (Army) Act, 1899.
Central Provinces Village-sanitation Act, 1902.	Presidency Banks Act, 1899.
Punjab Municipal Act, 1891.	Indian Coinage and Paper Currency Act, 1899.
Punjab Courts Act, 1899.	Indian Paper Currency Act, 1900.
Punjab Alienation of Land Act, 1900.	Bankers' Books Evidence Act, 1900.
Sindh Incumbered Estates Act, 1896.	Pilgrim Ships Act, 1895.
Oudh Courts Act (1891) Amendment Act, 1897.	Live-stock Importation Act, 1898.
Punjab Laws Act, 1898.	Indian Registration (Amendment) Act, 1899.
Northern India Canal and Drainage (Amendment) Act, 1899.	Church of Scotland Kirk Sessions Act, 1899.
Cantonments Act, 1889.	Repealing and Amending Act, 1901.
Indian Official Secrets Act, 1889.	Indian Emigration (Amendment) Act, 1902.
Indian Census Act, 1900.	Indian Extradition Act, 1903.

Indian Emigration (Amendment) Act, 1904.	Indian Limitation Act, 1908.
Indian Articles of War (Amendment) Act, 1904.	Indian Salt Duties Act, 1908.
Act to supplement certain provisions of the City of Bombay Improvement Act, 1898.	Assam Labour and Emigration (Amendment) Act, 1908.
Indian Stamp (Amendment) Act, 1904.	Indian Emigration (Amendment) Act, 1908.
Sea Customs (Amendment) Act, 1904.	Central Provinces Financial Commissioner's Act, 1908.
Indian Articles of War (Amendment) Act, 1905.	Indian Volunteers (Amendment) Act, 1909.
Court-fees (Amendment) Act, 1905.	Anand Marriage Act, 1909.
Bengal and Assam Laws Act, 1905.	Indian Emigration (Amendment) Act, 1910.
Excise (Amendment) Act, 1906.	Cantonments Act, 1910.
Land Improvement and Agriculturists' Loans (Amendment) Act, 1906.	Indian Census Act, 1910.
Local Authorities Loan (Amendment) Act, 1907.	Continuing Act, 1910.
Prevention of Seditious Meetings Act, 1907.	Indian Christian Marriage Act, 1911.
Explosive Substances Act, 1908.	Court-fees (Amendment) Act, 1911.
Newspapers (Incitements to Offences) Act, 1908.	Indian Forest (Amendment) Act, 1911.
Local Authorities Loan (Amendment) Act, 1908.	Bengal, Agra and Assam Civil Courts (Amendment) Act, 1911.
	Indian Airships Act, 1911.
	Calcutta Improvement (Appeals) Act, 1911.
	Cowasjee Jehangir Baronetcy Act, 1911.

Power for Governor General to make rules for conduct of legislative business.

18. It shall be lawful for the Governor General in Council to make rules for the conduct of business at meetings of the Council for the purpose of making laws and regulations under the provisions of this Act, prior to the first of such meetings ;

but such rules may be subsequently amended at meetings for the purpose of making laws or regulations, subject to the assent of the Governor General ;

and such rules shall prescribe the mode of promulgation and authentication of such laws and regulations :

Provided always that it shall be lawful for the Secretary of State in Council to disallow any such rule, and to render it of no effect.

For the rules in force under this section, see *Rules for the conduct of legislative business, post*. A similar power is conferred in the case of local Councils—see s. 37, *post*. See also note under s. 5 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4), below.

Business to be transacted at legislative meetings.

19. No business shall be transacted at any meeting for the purpose of making laws and regulations (except as last hereinbefore provided) other than the consideration and enactment of measures introduced into the Council for the purpose of such enactment, and it shall not be lawful for any Member or Additional Member to make, or for

the Council to entertain, any motion, unless such motion be for leave to introduce some measure as aforesaid into Council, or have reference to some measure actually introduced thereinto :

Provided always that it shall not be lawful for any Member or Additional Member to introduce, without the previous sanction of the Governor General, any measures affecting—

- (1st) the public debt or public revenues of India, or by which any charge would be imposed on such revenues :
- (2nd) the religion or religious rights and usages of any class of Her Majesty's subjects in India :
- (3rd) the discipline or maintenance of any part of Her Majesty's military or naval forces :
- (4th) the relations of the Government with foreign princes or states.

"It is not constitutional for the (Legislative) Council to force the Executive Government to any particular course." See speech of Sir H. S. Maine in Council on the 31st March, 1866, in connection with the Native Converts' Marriage Dissolution Bill. See also s. 24 of the despatch from the Secretary of State (Sir C. Wood, afterwards Lord Halifax), dated the 9th August, 1861—App. I, *post*, in which it is frankly stated that "one object of this section is to prevent the legislature from interfering with the functions of the Executive Government and occupying its time with matters which are not directly or immediately connected with the special duties assigned to it."

The provisions of this section were modified by s. 2 of the Indian Councils Act, 1892 (55 & 56 Vict., c. 14), which provided for the discussion of annual financial statements and the asking of questions in the Legislative Council; the Indian Councils Act, 1909 (9 Edw. 7, c. 4), which repealed s. 2 of the Act of 1892 has still further modified these provisions by providing for the moving of resolutions on matters of general public interest by the Legislative Council in addition to the discussion of annual financial statements and the asking of questions. As to whether a meeting of the Legislative Council may be summoned when there is no strictly legislative business to be brought before it, see note under s. 38 below.

20. When any law or regulation has been made by Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the Governor General, whether he shall or shall not have been present in Council at the making thereof, to declare that he assents to the same, or that he withholds his assent from the same, or that he reserves the same for the signification of the pleasure of Her Majesty thereon ;

Assent of  
Governor  
General to  
laws.

and no such law or regulation shall have validity until the Governor General shall have declared his assent to the same, or until (in the case of a law or regulation so reserved as aforesaid) Her Majesty shall have signified Her assent to the same to the Governor General, through the

Secretary of State for India in Council, and such assent shall have been duly proclaimed by the said Governor General.

These powers are conferred on the Governor General in person. There is no limit of time within which assent must be given, and it has been delayed pending a reference to the Secretary of State—see Legislative Department's U. O. No. 275 of 1898.

As soon as a Law has been assented to, it is published as an "Act" all Acts being numbered consecutively in a separate series for each calendar year.

The power of reserving a law or regulation for the signification of Her Majesty's pleasure thereon has apparently never been used.

For form of recording assent, *see* App. IX, No. 11, *post*.

Power of  
Crown to  
disallow laws.

21 Whenever any such law or regulation has been assented to by the Governor General, he shall transmit to the Secretary of State for India an authentic copy thereof ;

and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, Her disallowance of such law ;

and such disallowance shall make void and annul such law from or after the day on which the Governor General shall make known, by proclamation or by signification, to his Council that he has received the notification of such disallowance by Her Majesty.

This power of disallowance has apparently never been used ; but in 1877, the Secretary of State intimated that he would find it difficult to consent to the enactment of the Code of Civil Procedure, as it repealed the Lord's Day Act (29 Car. 2, c. 7), and suggested the passing of a short Act with reference thereto—see Legislative Department's Pros., July, 1877, Nos. 50 and 51, and March, 1879, Nos. 1—7. The suggestion was not acted upon—see Legislative Department's U. O. No. 683 of 1883.

When an Act has been passed by the Governor General in Council, the Secretary of State usually sends a despatch intimating that it has been considered by him in Council and will be left to its operation. But such a formal expression of approval is clearly not essential to its validity, and it need not be awaited before an Act is allowed to operate. No official action is taken on such despatches ; but, by a special arrangement with the Military Department, any Acts relating to military matters are sent to it unofficially for information by the Legislative Department.

Extent of  
legislative  
powers of  
Governor  
General's  
Legislative  
Council.

22. The Governor General in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and subject to the provisions herein contained, to make laws and regulations for repealing, amending or altering any laws or regulations whatever now in force or hereafter to be in force in the Indian territories now [or hereafter]<sup>1</sup> under the dominion of Her Majesty, and to make laws and regulations for all persons, whether British or Native, foreigners or others, and for all courts of justice

<sup>1</sup> These words were inserted, with retrospective effect, by 55 & 56 Vict., c. 14 (Indian Councils Act, 1892), s. 3, *post*.

whatever, and for all places and things whatever, within the said territories, and for all servants of the Government of India within the dominions of princes and states in alliance with Her Majesty;

and the laws and regulations so to be made by the Governor General in Council shall control and supersede any laws and regulations in anywise repugnant thereto which shall have been made prior thereto by the governors of the Presidencies of Fort St. George and Bombay respectively in Council or the Governor or Lieutenant-Governor in Council of any presidency or other territory for which a Council may be appointed, with power to make laws and regulations under and by virtue of this Act:

Provided always that the said Governor General in Council shall not have the power of making any laws and regulations which shall repeal or in any way affect any of the provisions of this Act:

or any of the provisions of the Government of India Act, 1833, and of the Government of India Act, 1853, and of the Government of India Act, 1854, which after the passing of this Act shall remain in force:

or any provisions of the Government of India Act, 1858, or of the Government of India Act, 1859, to amend the same.

or of any Act enabling the Secretary of State in Council to raise money in the United Kingdom for the Government of India:

or of the Acts for punishing mutiny and desertion in Her Majesty's army or in Her Majesty's Indian forces, respectively; but subject to the provision contained in the Government of India Act, 1833, s. 73, respecting the Indian Articles of War:

or any provisions of any Act passed in this present session of Parliament, or hereafter to be passed, in anywise affecting Her Majesty's Indian territories, or the inhabitants thereof:

or which may affect the authority of Parliament, or the constitution and rights of the East India Company, or any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom or the sovereignty or dominion of the Crown over any part of the said territories.

As to the words "all courts of justice whatever," *see* App. VIII, *post*.

The expression "princes and states in alliance with Her Majesty" must, it is generally admitted, be read as limited to the feudatory princes and states *in India*. *Cf.* the language of the Government of India Act, 1865 (28 & 29 Vict., c. 17) *post*.

3 & 4 Will.  
4, c. 85.  
17 & 18  
Vict., c. 77,  
21 & 22  
Vict., c. 106.  
22 & 23  
Vict., c. 41.

3 & 4 Will.  
4, c. 85.



There is a conflict of opinion on the question whether the Indian Legislature can authorize a court sitting in British India to pass judgment in cases between foreign (Native State) subjects arising in foreign (Native State) territory by virtue of any foreign jurisdiction which it may possess.—Legislative Department's unofficial Nos. 286 of 1903 and 116 and 555 of 1909.

An inter-departmental Committee, consisting of Sir W. Lee Warner and Messrs. H. Bertram Cox, C. I., B. Huust and S. G. Sale, to whom certain questions on the exercise of foreign jurisdiction by courts in British India were referred by the Secretary of State for India have held that the Indian Legislature can make laws for protecting the dignity or authority of such a court and giving effect to its orders; they, however, point out that it would be in every way convenient and desirable that, in regulating foreign jurisdiction, the Government of India should act in conformity with the law and procedure laid down in the Foreign Jurisdiction Act, 1890.—Secretary of State's Despatch, Political No. 105, dated 14th October, 1910, and enclosures. There is however, a distinction between power to give judgment, original or appellate, and the power to execute such judgment, and the Indian legislature has frequently empowered courts or other authorities in British India to execute judgments and sentences passed by foreign (Native State) courts.—Legislative Department's unofficial Nos. 286 of 1908, 116 and 555 of 1909.

The word "affect" has been construed to mean "affect prejudicially" or "affect *in malam partem*" See further, App. VIII, *post*. It would now probably be construed to mean "alter"—see *Hari v. Secretary of State* (1903) I. L. R., 27, Bom., 424; *Ilbert*, p. 206.

The bar imposed by the earlier part of the section has been removed as regards certain provisions of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), by s. 3 of the Indian Councils Act, 1869 (32 & 33 Vict., c. 98), *post*.

The words "any provisions of any Act" mean any provisions in the Act itself and do not cover, *e.g.*, the contents of the letters patent issued under the Indian High Courts Act, 1861 (24 & 25 Vict., c. 104)—see *The Queen v. Meares* (1874), 14 B. L. R., at p. 112; see, however, *In the matter of Fida Hossain*, I. L. R., 1 Cal., p. 431.

The East India Company had practically ceased to exist in 1858, when the transfer to the Crown was effected by the passing of the Government of India Act, 1858 (21 & 22 Vict., c. 106); and the only explanation of this saving of its "constitution and rights" is to be found in the fact that it was not till 1874 that the corporation was formally dissolved by the East India Stock Dividend Redemption Act, 1873 (36 & 37 Vict., c. 17).

The words "the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom" refer apparently to the provisions of the Great Charter and the Petition of Rights, which set forth and asserted the rights of the subject according to what was supposed to be the ancient unwritten law and constitution of the realm, and on the due observance of which by the Sovereign may be said to depend the allegiance of his subjects. See *in the matter of Ameer Khan* (1870), 6 B. L. R., at pp. 450—455.

It should be noted that an Act giving power to any court, other than a chartered High Court, to sentence European British subjects to death requires the previous sanction of the Secretary of State in Council. See s. 36 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85); also s. 5 of the Indian Marine Service Act, 1884 (47 & 48 Vict., c. 38).

Further powers have been conferred by s. 1 of the Government of India Act, 1865 (28 & 29 Vict., c. 17) and s. 1 of the Indian Councils Act, 1869 (32 & 33 Vict., c. 98), *post*. The former is to be read as part of s. 22 of this Act, and it empowers the Governor General in Council

"to make laws and regulations for all British subjects of Her Majesty within the dominions of princes and states in India in alliance with Her Majesty whether in the service of the Government of India or otherwise." The latter authorises legislation "for all persons, being native Indian subjects of Her Majesty, Her heirs and successors without and beyond as well as within the Indian territories under the dominion of Her Majesty." The result is that, while the Governor General's Legislative Council has plenary power—see *Empress v. Burah* (1878), L. R. 5, I. A. 178—to legislate for all persons, courts, places and things whatsoever within British India, it has also extra-territorial power in that it may make laws for native Indian subjects of the King anywhere; for European British subjects and servants of the Government of India in the feudatory states of India; and for native officers and soldiers of the Army and persons belonging to the Royal Indian Marine, wherever they may be serving.

The Act for punishing mutiny and desertion in His Majesty's Army is now the Army Act (44 & 45 Vict., c. 58), the provisions of which are by this section rendered paramount. The Indian Articles of War (Act V of 1869) were enacted under the authority conferred by s. 73 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), which runs as follows:—

"73. It shall be lawful for the said Governor General in Council from time to time to make articles of war for the government of the native officers and soldiers in the military service of the Company and for the administration of justice by courts-martial holden on such officers and soldiers, and such articles of war from time to time to repeal or vary and amend; and such articles shall be made and taken notice of in the same manner as all other laws and regulations to be made by the said Governor General in Council under this Act, and shall prevail and be in force, and shall be of exclusive authority, over all the native officers and soldiers in the said military service, to whatever presidency such officers and soldiers may belong or wheresoever they may be serving."

S. 180 (2) of the Army Act itself expressly recognises such Articles by providing that nothing in it shall prejudice or affect them. The Indian Articles of War have been repealed and re-enacted with amendments as the Indian Army Act, 1911 (VIII of 1911).

For digest and further notes, see *Ilbert*, pp 200—208. See also Chalmers' *General Clauses Act*, 1897, pp 50—52.

23. Notwithstanding anything in this Act contained, it shall be lawful for the Governor General, in cases of emergency, to make and promulgate from time to time ordinances for the peace and good government of the said territories or of any part thereof, subject, however, to the restrictions contained in the last preceding section; Temporary ordinances.

and every such ordinance shall have like force of law with a law or regulation made by the Governor General in Council as by this Act provided, for the space of not more than six months from its promulgation, unless the disallowance of such ordinance by Her Majesty shall be earlier signified to the Governor General by the Secretary of State for India in Council, or unless such ordinance shall be controlled or superseded by some law or regulation made by the Governor General in Council at a meeting for the purpose of making laws and regulations as by this Act provided.

This extraordinary power is not unlike that which was, for but a short time during the reigns of Henry VIII and Edward VI, placed in

the hands of the Sovereign in Council in England by the Statute of Proclamations; (31 Hen. 8, c. 8) — see Dicey's *Law of the Constitution*, at p. 47. It has been resorted to on only six occasions; once with the object of restraining certain dramatic performances of a character calculated to excite racial animosity; once in order to deal with the disturbed state of the Agror Valley in the Punjab; once in order to deal with seditious meetings; and thrice in connection with matters of purely fiscal importance. "It is to be called into action only on urgent occasions, the reasons for a resort to it should always be recorded, and these, together with the ordinance itself should be submitted, without loss of time, for the consideration of Her Majesty's Government." See s. 26 of the despatch from the Secretary of State (Sir C. Wood, afterwards Lord Halifax), dated the 9th August, 1861—App. I, *post*.

For an example of a notification making and promulgating an ordinance under this section, see App. IX, No. 13, *post*. For digest and further note, see *Ilbert*, p. 213.

No law  
invalid by  
reason of  
affecting  
prerogative.

24. No law or regulation made by the Governor General in Council (subject to the power of disallowance by the Crown, as hereinbefore provided) shall be deemed invalid by reason only that it affects the prerogative of the Crown.

There is no such saving as regards the Acts of local legislatures; and from this it has been inferred by Sir C. Ilbert — see *Government of India*, at p. 221, that a local Council cannot affect the royal prerogative. But the contrary was held in *Bell v. Municipal Commissioners for the city of Madras* (1901), I. L. R. 25 Mad., 457.

Laws made  
for non-  
regulation  
provinces  
declared  
valid.

25. Whereas doubts have been entertained whether the Governor General in India, or the Governor General of India in Council, had the power of making rules, laws, and regulations for the territories known from time to time as "non-regulation provinces," except at meetings for making laws and regulations, in conformity with the provisions of the Government of India Act, 1833, and of the Government of India Act, 1853, and whether the Governor, or Governor in Council, or Lieutenant-Governor of any Presidency or part of India, had such power in respect of any such territories:

3 & 4 Will.  
4, c. 85.  
16 & 17  
Vict., c. 95.

Be it enacted that no rule, law or regulation which prior to the passing of this Act shall have been made by the Governor General, or Governor General in Council, or by any other of the authorities aforesaid, for and in respect of any such non-regulation province, shall be deemed invalid only by reason of the same not having been made in conformity with the provisions of the said Acts, or of any other Act of Parliament respecting the constitution and powers of the Council of India or of the Governor General, or respecting the powers of such Governors or Governors in Council or Lieutenant-Governors as aforesaid.

As to the effect of this provision, see the speech of Sir James Stephen in the debate on the Punjab Laws Act (Pros. of Council, 1872, at p. 214), and Hunter's *Life of Lord Mayo*, vol. II, at pp. 214–221: also Legislative Department's B. Pros., August 1883, No. 108. The section may now be regarded as spent.

26. It shall be lawful for the Governor General in Council, or Governor in Council of either of the Presidencies, as the case may be, to grant to an Ordinary Member of Council leave of absence, under medical certificate, for a period not exceeding six months; Leave of absence to Ordinary Member of Council.

and such Member, during his absence, shall retain his office, and shall, on his return and resumption of his duties receive half his salary for the period of such absence, but, if his absence shall exceed six months, his office shall be vacated.

This provision removes, in the case of an Ordinary Member of Council, the disability as regards the taking of leave to Europe still imposed on the Governor General, the Governors of Madras and Bombay and the Commander-in-Chief, by s. 79 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85).

Leave to an Ordinary Member of Council, if taken out of India, commences, in the absence of special orders to the contrary, on the day after he embarks at any port in India, except Aden, and ends on the day before he disembarks at any such port, provided that he has not been relieved of charge of his office until he embarks and that he resumes charge immediately upon his disembarkation—see the *Civil Service Regulations*, Art. 538. For form of notification granting an Ordinary Member leave, see App. IX, No. 4, *post*. As to salary, see note to s. 4, *ante*.

As to the salaries of the Governors of Madras and Bombay and the Ordinary Members of their Councils, see s. 35 of the East India Company Act, 1853 (16 & 17 Vict., c. 95). If the Commander-in-Chief in India should happen to be resident in the Madras or Bombay Presidency—a contingency which has never occurred and is scarcely likely ever to occur—he would, under s. 33 of the East India Company Act, 1793 (33 Geo. 3, c. 52) become for the time being a Member of the local Executive Council, and, therefore, also of the local Legislative Council.

As regards the Governor in Council of Bengal and the Ordinary Members of that Council, see the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6) s. 1.

27. If any vacancy shall happen in the office of an Ordinary Member of the Council of the Governor General or of the Council of either of the Presidencies, when no person provisionally appointed to succeed thereto shall be then present on the spot, then and on every such occasion such vacancy shall be supplied by the appointment of the Governor General in Council, or the Governor in Council, as the case may be; Power to appoint temporary Members of Council.

and until a successor shall arrive, the person so nominated shall execute the office to which he shall have been appointed, and shall have all the powers thereof, and shall have and be entitled to the salary and other emoluments and advantages appertaining to the said office during his continuance therein, every such temporary Member of Council foregoing all salaries and allowances by him held and enjoyed at the time of his being appointed to such office;

and if any Ordinary Member of the Council of the Governor General or of the Council of either of the Presidencies

shall, by any infirmity or otherwise, be rendered incapable of acting or of attending to act as such, or if any such Member shall be absent on leave, and if any person shall have been provisionally appointed as aforesaid, then the place of such Member absent or unable to attend shall be supplied by such person; and if no person provisionally appointed to succeed to the office shall be then on the spot, the Governor General in Council, or Governor in Council, as the case may be, shall appoint some person to be a temporary Member of Council;

and until the return of the Member so absent or unable to attend, the person so provisionally appointed by the Secretary of State in Council, or so appointed by the Governor General in Council, or Governor in Council, as the case may be, shall execute the office to which he shall have been appointed, and shall have all the powers thereof, and shall receive half the salary of the Member of Council whose place he supplies, and also half the salary of his office under the Government of India, or the Government of either of the Presidencies, as the case may be, if he hold any such office, the remaining half of such last-named salary being at the disposal of the Government of India, or other Government as aforesaid :

Provided always that no person shall be appointed a temporary Member of the said Council who might not have been appointed as hereinbefore provided to fill the vacancy supplied by such temporary appointment.

As regards the case of an Ordinary Member of the Council of the Governor of Bengal, *see* the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6), s. 1, *post*.

As to provisional appointments made by the Secretary of State with the concurrence of a majority of the Members present at a meeting of his Council, *see* s. 5, *ante*.

The words "by any infirmity or otherwise" should probably be construed as meaning "by infirmity or some other event not under the Member's control." *See* Legislative Department's A. Pros., March, 1879, No. 8.

For form of notification appointing a temporary Member of Council, *see* App. IX, No. 3, *post*. For digest, *see* *Ilbert*, pp. 232—233.

Power for  
Governors of  
Madras and  
Bombay  
to make  
rules for  
conduct of  
business.

28. It shall be lawful for the Governors of the Presidencies of Fort St. George and Bombay respectively from time to time to make rules and orders for the conduct of business in their Councils, and any order made or act done in accordance with such directions (except as hereinafter provided respecting laws and regulations) shall be deemed to be the order or act of the Governor in Council.

*Cf.* s. 8. For digest, *see* *Ilbert*, p. 190. The Governor of the Presidency of Fort William in Bengal has a similar power in respect of his Council; *see* the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6), s. 1, *post*.

29. For the better exercise of the power of making laws and regulations hereinafter vested in the Governors of the said Presidencies in Council respectively, each of the said Governors shall, in addition to the Members whereof his Council now by law consists, or may consist, termed herein Ordinary Members, nominate to be Additional Members the Advocate-General of the Presidency, or officer acting in that capacity, and such other persons, <sup>1</sup>\* \* \* \* as to him may seem expedient to be Members of Council, for the purpose of making laws and regulations only, and such Members shall not be entitled to sit or vote at any meeting of Council except at meetings held for such purpose :

Additional Members to be summoned for legislation in Madras and Bombay.

Provided that not less than half of the persons so nominated shall be non-official persons, as hereinbefore described, and that the seat in Council of any non-official Member accepting office under the Crown in India shall be vacated on such acceptance.

The provisions of this section and the subsequent sections relating to the Presidencies of Madras and Bombay apply also to the Governor of the Presidency of Fort William in Bengal and his Council and the Members of that Council with certain exceptions: *see* the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6), s. 1, *post*.

As to the expression "laws and regulations," *see* the first note to s. 10, *ante*. The term "Act" is now used with reference to an enactment of a local legislature, it being qualified by the prefix "Madras," "Bombay," "Bengal," "United Provinces," "Punjab," "Burma," etc., as the case may be. Thus "Madras Act I of 1903" indicates the Madras Planters Labour Act, 1903, being the first Act passed in the calendar year 1903 by the Council of the Governor of Madras assembled for the purpose of making laws and regulations.

For the modifications in the constitution of the Legislative Councils effected by the Indian Councils Act, 1909 (9 Edw. 7, c. 4), *see* notes under s. 10 above. For the enlargement of their functions, *see* notes under s. 38 below.

The number of Additional Members for the Madras, Bombay and Bengal Councils, other than the Advocate-General or other officer acting in that capacity in the case of the Madras and Bombay Councils, shall not now be more than fifty—*see* Indian Councils Act, 1909 (9 Edw. 7 c. 4); the actual number in the case of each Council is fixed by the Regulations thereunder for that Council. As to the words "non-official persons" and "office under the Crown," *see* the notes to s. 10, *ante*.

*Quære* whether a person who is at the time absent from India may be nominated—*see* Legislative Department's U. O. No. 514 of 1897.

As to whether the words "or officer acting in that capacity" include a Legal Remembrancer or Government Advocate, *see* Legislative Department's U. O. No. 1012 of 1886.

The "half" probably does not include the Advocate General—*see* Legislative Department's U. O. No. 1630 of 1878; but the point, as Sir C. Ilbert remarks, does not seem to be clear. S. 33, however, diminishes its practical importance. The representation of non-officials is further safeguarded by the provision which is contained in the Regulations for all the Provincial Legislative Councils made under the Indian Councils Act, 1909 (9 Edw. 7, c. 4), that it shall not be lawful to nominate

<sup>1</sup> The words "not less than four nor more than eight in number" were repealed by the Indian Councils Act, 1909 (9 Edw. 7, c. 4).

so many official persons under the Regulations that the majority of all the Members of the Council shall be officials. As to the position of the Advocate-General of Bengal with reference to the Bengal Legislative Council, the Government of India Act, 1912, (2 & 3 Geo. 5, c. 6), expressly provides that it shall not be compulsory to nominate the Advocate-General of Bengal to be an Additional Member of the Legislative Council of the Governor of Bengal—see Government of India Act, 1912 (2 & 3 Geo. 5, c. 6), s. 1 (1), proviso (b), *pos.* As to the appointment of the Advocate-General, see the notes to r. 17 of the *Rules of Business, post.*

There is no bar to a Member of a local Council retaining his seat in it after appointment as an Additional Member of the Governor General's Council. See Legislative Department's B. Pros., November 1898, Nos. 28—41.

For the grant of allowances to the non-official Members of local Legislative Councils, see the *Civil Service Regulations*, Art. 1148.

Term of  
appointment  
of Additional  
Member.

30. Every Additional Member of Council so nominated shall be summoned to all meetings held for the purpose of making laws and regulations <sup>1</sup>\* \* \* \*.

The term of office of Additional Members is now provided for in the Regulations made under the Indian Councils Act, 1909 (9 Edw. 7, c. 4).

The provision as to the term of appointment of Additional Members originally contained in this section was probably inapplicable to the Advocate-General—see Legislative Department's unofficial No 1630 of 1878, and the notes to s. 29 above.

See note under s. 38 below.

Resignation  
of Addi-  
tional  
Member.

31. It shall be lawful for any such Additional Member of Council to resign his office to the Governor of the Presidency, and on acceptance of such resignation by the Governor of the Presidency, such office shall become vacant.

This section also seems to be inapplicable to the Advocate-General—see the notes to s. 29 above. Also *cf.* s. 12, *ante.*

32. [*Rep. by the Indian Councils Act, 1892 (55 & 56 Vict., c. 14), s. 4.*]

This section provided for the filling up of vacancies in the number of Additional Members of the Legislative Councils of Madras and Bombay. The Regulations made under the Indian Councils Act, 1909 (9 Edw. 7, c. 4), make fresh provision on the subject, see s. 1 (2) of that Statute *post* and Reg. XI of the respective Regulations.

No law to be  
invalid by  
reason of  
incomplete  
number of  
non-official  
Members.

33. No law or regulation made by any such Governor in Council in accordance with the provisions of this Act shall be deemed invalid by reason only that the proportion of non-official Additional Members hereby established was not complete at the date of its introduction to the Council or its enactment.

*Cf.* s. 14, *ante.*

<sup>1</sup> The words "for the term of two years from the date of such nomination" were repealed by the Indian Councils Act, 1909 (9 Edw. 7, c. 4).

34. At any meeting of the Council of either of the said President, Presidencies from which the Governor shall be absent, the senior civil Ordinary Member of Council present shall quorum, and preside; <sup>1</sup>\* \* \* \*. <sup>2</sup>casting vote.

and in any case of difference of opinion at meetings of any such Council for making laws and regulations, where there shall be an equality of voices, the Governor, or, in his absence, the senior Member then presiding, shall have two votes or the casting vote.

Section 4 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4), requires the Governor General and all Governors and Lieutenant-Governors to appoint a member of their respective Councils to be Vice-President thereof, and such Vice-President shall be deemed to be the Senior Member. The number of Additional Members required to constitute a *quorum* is to be found in the Regulations: *see* Indian Councils Act, 1909 (9 Edw. 7, c. 4), s. 1 (2), *post*, and Reg XIII of the respective Regulations; *see* also notes under s. 15 above.

35. [*Rep. by the Statute Law Revision Act, 1892 (55 & 56 Vict., c. 19).*]

This section empowered the Governor General in Council to fix the first meetings of the Legislative Councils of Madras and Bombay. It was repealed as being spent.

36. It shall be lawful for every such Governor to appoint <sup>Power to</sup> all <sup>2</sup>\* times and places of meeting of his Council for the purpose of making laws and regulations under the provisions of this Act, and to adjourn or from time to time to authorize such senior Ordinary Member of Council in his absence to adjourn any meeting for making laws and regulations from time to time and from place to place. <sup>appoint and adjourn legislative meetings.</sup>

The Vice-President appointed under the Indian Councils Act, 1909, s. 4, is to be deemed to be the senior Member. See notes under s. 15 *ante*, and s. 38 below.

37. Previously to the first of such meetings of their Councils for the purpose of making laws and regulations under the provisions of this Act, the Governors of the said Presidencies in Council respectively shall make rules for the conduct of business at such meetings subject to the sanction of the Governor General in Council; <sup>Rules for conduct of legislative business.</sup>

but such rules may be subsequently amended at meetings for the purpose of making laws and regulations, subject to the assent of the Governor :

<sup>1</sup> The words "and the power of making laws and regulations hereby vested in such Governor in Council shall be exercised only at meetings of such Council at which the Governor or some Ordinary Member of Council, and four or more Members of Council (including under the term Members of Council such Additional Members as aforesaid), shall be present," were repealed by the Indian Councils Act, 1909 (9 Edw. 7, c. 4).

<sup>2</sup> The word "subsequent" was repealed by 55 & 56 Vict., c. 19 (S. L. R.).



Provided, always, that it shall be lawful for the Governor General in Council to disallow any such rule, and render the same of no effect.

*Cf.* the provision made in the case of the Governor General's Council by s. 18, *ante*.

Business to be transacted at legislative meetings.

**38.** No business shall be transacted at any meeting of the Council of either of the said Presidencies for the purpose of making laws and regulations (except as last hereinbefore provided) other than the consideration and enactment of measures introduced into such Council for the purpose of such enactment;

and it shall not be lawful for any Member or Additional Member to make, or for the Council to entertain, any motion, unless such motion shall be for leave to introduce some measure as aforesaid into Council or have reference to some measure actually introduced thereinto:

Provided, always, that it shall not be lawful for any Member or Additional Member to introduce, without the previous sanction of the Governor, any measure affecting the public revenues of the Presidency, or by which any charge shall be imposed on such revenues.

The provisions of this section were modified by s. 2 of the Indian Councils Act, 1892 (55 & 56 Vict., c. 14), which provided for the discussion of annual financial statements and the asking of questions in the Legislative Councils; the Indian Councils Act, 1909, (9 Edw. 7, c. 4), which repealed s. 2 of the Act of 1892, has still further modified these provisions and enlarged the functions of the Legislative Councils by providing for the moving of resolutions on matters of general public interest in addition to the discussion of the annual financial statement and the asking of questions. It was, however, held by the Secretary of State, after the passing of the Act of 1892, that a meeting of the Legislative Council could be summoned only for the purpose of making laws and regulations, and that it could not legally be summoned for the purpose of merely discussing the financial statement or of giving replies to questions at a time when there is no (strictly) legislative business before it. Despatch No 24 Public, dated 16th February, 1893, from Secretary of State to Government of India, paragraph 7—quoted in Legislative Department B, Pros. April, 1912, Nos. 330—332. The Advocate-General of Madras inclined to the opinion that this ruling by the Secretary of State would hold good in the case of the Legislative Councils constituted under the Act of 1909.—Legislative Department B Pros., April, 1912, Nos. 330—332.

Assent of Governor to laws.

**39.** When any law or regulation has been made by any such Council at a meeting for the purpose of making laws and regulations as aforesaid, it shall be lawful for the Governor, whether he shall or shall not have been present in Council at such meeting, to declare that he assents to, or withholds his assent from, the same.

This power is conferred on the Governor in person. For form of recording assent, see App. IX, No. 12, *post*.

40. The Governor shall transmit forthwith an authentic copy of every law or regulation to which he shall have so declared his assent to the Governor General ;

Assent of Governor General to laws of local Councils.

and no such law or regulation shall have validity until the Governor General shall have assented thereto, and such assent shall have been signified by him to, and published by, the Governor :

Provided always that in every case where the Governor General shall withhold his assent from any such law or regulation, he shall signify to the Governor in writing his reason for so withholding his assent.

The power of assenting to, or withholding assent from, an Act of a local legislature is, it will be seen, conferred on the Governor General personally.

The communication of the Governor General's assent by telegram has been deemed sufficient—see Legislative Department's A. Pros., April, 1894, Nos. 42—49.

Where there is room for doubt whether an Act passed by a local legislature is *ultra vires* or not, the practice is to give it the benefit of the doubt, and obtain the Governor General's assent; and, even where it has been clear that an Act was *ultra vires* of the local legislature, the Governor General has nevertheless given his assent. It is difficult to classify the latter cases further than by saying that the Governor General has given his assent to Acts that are *ultra vires*—

- (a) on the ground of urgency—see Legislative Department's A. Pros., April, 1882, Nos. 424—444 ;
- (b) on the ground that the conflict between the local law and the Imperial Act would in practice rarely, if ever, occur—see Legislative Department's A. Pros., August, 1879, Nos. 1—17 ;
- (c) on the ground of inconvenience to a Local Government in having to re-enact the measure—see Legislative Department's A. Pros., July, 1878, Nos. 34—96 ;
- (d) subject to the conditions—
  - (i) that the obnoxious provisions would be construed so as not to conflict with the Imperial Act—see Legislative Department's A. Pros., July, 1878, Nos. 12—23 ;
  - (ii) that the Local Government would take steps to repeal the obnoxious provisions at the earliest possible date—see Legislative Department's A. Pros., September, 1884, Nos. 32—65.

See, too, the Madras Irrigation Bill—Legislative Department's A. Pros., August, 1900, Nos. 14—21 ; and the Bombay Land-revenue Code Bill—*ibid.*, October, 1901, Nos. 1—25.

Assent has been given to an Act passed by a local legislature even although it contained penal clauses to which the previous sanction of the Governor General in Council had not been obtained, as required by the Secretary of State's despatch No. 35 (Legislative), dated the 1st December, 1862, App. II, *post*.

The Governor General's power of withholding assent from an Act of a local legislature is not compromised by the fact that the penal clauses have been approved, or that administrative approval of the measure has been expressed. See r. 4 of the *Instructions to Local Governments*, *post*.

An Act of a local legislature does not become law until it has been assented to by the Governor General, and such assent has been published. Hence it should be expressed so as to come into operation on a particular future date, unless there is in the local Statute-book such a provision as that to be found in s. 4 (1) of the Burma General Clauses Act, 1898 (Burma Act I of 1898), s. 3 of the Punjab General Clauses Act, 1898 (Punjab Act I of 1898), or s. 6 (1) of the Bengal General Clauses Act, 1899 (Bengal Act I of 1899). In that event the date on which each enactment actually came into force should be prominently indicated on all reprints of it.

As soon as a law or regulation made by a subordinate legislature has been assented to by the Governor General, it is published as an Act, and the Acts of each local Council are numbered consecutively in a separate series for each calendar year. See the first note to s. 29 above.

As in the case of Acts of the Governor General's Council, it is usual for the Secretary of State to send a despatch intimating that an Act passed by a local legislature has been considered by him in Council and will be left to its operation. Copies of these despatches are sent to the Local Governments concerned; but, as explained in the note to s. 21 above, action on a law need not be deferred pending the receipt of such an intimation.

A local legislature cannot extend the territorial operation of an Act of Parliament—see Legislative Department's Unofficial Reference No. 3277, October, 1881.

A local Legislative Council may deal freely with the jurisdiction of the Courts in so far as that jurisdiction rests on an Act of the legislature in India—see s. 14 *et seq.* of note in App. VIII, *post*.

The power of a local legislature to make laws as to jurisdiction over European British subjects has been extended by the Indian Councils Act, 1871 (34 & 35 Vict., c. 34), *post*.

For form of recording the Governor General's assent, see App. IX, No. 12, *post*. For digest, see *Ilbert*, pp. 222, 223.

Power of  
Crown to  
disallow laws  
of local  
Councils.

41. Whenever any such law or regulation shall have been assented to by the Governor General, he shall transmit to the Secretary of State for India an authentic copy thereof;

and it shall be lawful for Her Majesty to signify, through the Secretary of State for India in Council, Her disallowance of such law or regulation;

and such disallowance shall make void and annul such law or regulation from or after the day on which such Governor shall make known by proclamation, or by signification to the Council, that he has received the notification of such disallowance by Her Majesty.

For digest, see *Ilbert*, pp. 222, 223. This power has apparently never been used.

Extent of  
legislative  
powers of  
local Coun-  
cils:

42. The Governor of each of the said Presidencies in Council shall have power at meetings for the purpose of making laws and regulations as aforesaid, and, subject to the provisions herein contained, to make laws and regulations for the peace and good government of such Presidency, and for that purpose to repeal and amend any laws and regu-

lations made prior to the coming into operation of this Act by any authority in India, so far as they affect such Presidency :

Provided always that such Governor in Council shall not have the power of making laws or regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force, or hereafter to be in force, in such Presidency.

The powers of a local legislature are, it will be seen, strictly territorial. They have been extended, as far as regards the repeals and amendment of other laws, by s. 5 of the Indian Councils Act, 1892, (55 & 56 Vict., c. 14), *post*.

As to the power of a local legislature to affect the jurisdiction of a High Court, see s. 14 *et seq.* of note in App. VIII, *post*. As to the prerogative of the Crown, see the note to s. 24, *ante*.

The interesting point whether a local legislature in India can create a corporation—as it has frequently purported to do—was raised, but not decided, in *Hari v. Secretary of State for India* (1903), I. L. R. 27, Bom. at p. 442. In England the Sovereign's consent (express or implied) is by prerogative necessary, and even a statutory corporation is no exception, because the royal assent is essential to the validity of the constituting Statute. *Quære* whether the non-exercise of the power of disallowance reserved for the Crown in s. 41 is sufficient in the case of an Indian enactment creating a corporation.

In his despatch No. 44, dated the 3rd December, 1896, the Secretary of State (Lord George Hamilton) remarked that “it appeared inconvenient to incorporate as part of a general Act, sections which are passed by a local legislature and are only intended to have a local application.” Therefore, where a local legislature repeals or amends a general Act, it ought not to do so textually, but should enact the modifying provisions desired as a separate Act of the local legislature to take effect, with the previous sanction of the Governor General required by s. 5 of the Indian Councils Act, 1892 (55 & 56 Vict., c. 14), notwithstanding anything contained in the general Act.—Legislative Department's U. O. No. 54 of 1911.

For digest and further notes, see *Ilbert*, pp. 218—221 & Chalmers's *General Clauses Act, 1897*, pp. 54-55.

43. It shall not be lawful for the Governor in Council of either of the aforesaid Presidencies, except with the sanction of the Governor General, previously communicated to him, to make regulations or take into consideration any law or regulation for any of the purposes next hereinafter mentioned ; that is to say,

Previous sanction of Governor General required in certain cases.

(1) affecting the public debt of India or the customs duties, or any other tax or duty now in force and imposed by the authority of the Government of India for the general purposes of such Government :

(2) regulating any of the current coin, or the issue of any bills, notes or other paper currency :

(3) regulating the conveyance of letters by the post office or messages by the electric telegraph within the Presidency :

(4) altering in any way the Penal Code of India, as established by Act of the Governor General in Council, No. 42 of 1860 :

(5) affecting the religion or religious rites and usages to any class of Her Majesty's subjects in India :

(6) affecting the discipline or maintenance of any part of Her Majesty's military or naval forces :

(7) regulating patents or copyright :

(8) affecting the relations of the Government with foreign princes or states :

Provided always that no law or provision of any law or regulation which shall have been made by any such Governor in Council, and assented to by the Governor General as aforesaid, shall be deemed invalid only by reason of its relating to any of the purposes comprised in the above list.

In this connection, see, also, s. 5 of the Indian Councils Act, 1892, (55 & 56 Vict., c. 14), *post*.

The power of sanction here given is conferred on the Governor General personally. The sanction should be obtained before the measure requiring it is introduced—see Legislative Department's U. O. No. 807 of 1898.

In clause (4) "42" must have been a misprint for "45." As to the meaning of the words "altering in any way," see the despatch from the Secretary of State (Sir C. Wood, afterwards Lord Hallifax), dated the 1st December, 1862, and the notes thereto in App. II, *post*. Should a local legislature desire textually to amend the Indian Penal Code, or to restrict its operation, or otherwise to alter its provisions, the previous and personal sanction of the Governor General would be required, not only by this clause, but also by s. 42 above and s. 5 of the Indian Councils Act, 1892, (55 & 56 Vict., c. 14). But cases of this kind are, it is believed, unknown, and the most that the Bills of local Councils ever do in this connection is to enlarge the volume of penal law by constituting new and special offences and adding fresh penal sanctions. The Secretary of State in 1862 seems to have admitted that such a penal clause could scarcely be said, as a matter *strictissimi juris*, to "alter in any way" the Indian Penal Code of 1860; but he desired that legislation of this kind should be jealously guarded, and in consequence, he directed that no Bill of a local Council containing a penal clause should be introduced without the administrative sanction of the Governor General in Council. Effect is given to this direction by s. 3 (1) of the *Instructions to Local Governments regarding legislation in Local Councils*, *post*. When a Bill is received from a Local Government, its penal clauses as well as other provisions are considered administratively by the Administrative Department concerned in precisely the same manner as with any other case; and on its return to the Legislative Department, that Department does not submit the penal clause to the Governor General unless—

- (a) it considers that the penal clause "alters in any way" the Indian Penal Code and, therefore, requires the Governor General's personal sanction; or
- (b) any objection is raised, in which case the penal clause must be referred to the Governor General under r. 10, or, it may be, r. 11 (2), of the *Rules of Business*, *post*; or
- (c) the Administrative Department concerned has expressed the opinion that the penal clause is, from the executive point of view, of such importance that it ought to be submitted to the Governor General

Although Rule 29 of the *Rules of Business* (see *post*) no longer requires the Legislative Department to refer unofficially to Home Department every penal clause contained in a local Council Bill, in all cases of importance such reference should be made.—see Legislative Department notes on the Bombay Abkari Act, 1878 (Amendment) Bill, O. D. Nos. 211 and 1216 of 1912.

Independently of this, every Bill of a local Council must be submitted to the Governor General under s. 30(3) of the *Rules of Business*, *post*.

Hindu law and Muhammadan law are so essentially religions that any measure affecting either would seem to require the previous sanction of the Governor General under clause (5)—see Legislative Department's unofficial No. 344 of 1897.

Since even the Governor General's Council is, by s. 22 above, precluded from legislating so as to repeal or in any way affect the Army Act (41 & 45 Vict., c. 5), it follows that the Governor General could not sanction the introduction into a local Council of any such measure.

For digest and further notes, see *Ilbert*, pp. 218-221.

44. The Governor General in Council, so soon as it shall appear to him expedient, shall, by proclamation, extend the provisions of this Act touching the making of laws and regulations for the peace and good government of the Presidencies of Fort Saint George and Bombay to the Bengal Division of the Presidency of Fort William, and shall specify in such proclamation the period at which such provisions shall take effect, and the number of councillors whom the Lieutenant-Governor of the said division may nominate for his assistance in making laws and regulations;

Establishment of local Legislative Councils in Bengal, United Provinces and Punjab.

and it shall be further lawful for the Governor General in Council, from time to time and in his discretion, by similar proclamation, to extend the same provisions to the territories known as the North-Western Provinces and the Punjab, respectively.

These provisions took effect in Bengal on 18th January, 1862—*Calcutta Gazette*, 1862, pp. 227-228; in the North-Western Provinces and Oudh, now known as "the United Provinces of Agra and Oudh"—see the United Provinces (Designation) Act, 1902 (VII of 1902)—on the 1st December, 1886—*Gazette of India*, 1886, Pt. I, p. 708; in the Punjab on the 1st May, 1897—*Gazette of India*, 1897, Pt. I, p. 261; and under s. 46 below, in Burma on the 1st mentioned date—*ibid*; and in Eastern Bengal and Assam on the 16th October, 1905—*Gazette of India*, 1905, Pt. I, p. 734. For the constitution of the province of Bihar and Orissa on the 1st April 1912—see proclamation in *Gazette of India*, 1912, Pt. I, p. 304. Provision as to the number of Councillors is now made in the Regulations made under the Indian Councils Act, 1909, (9 Edw. 7, c. 4), and not by the proclamation—see the proclamation in the *Gazette of India*, 1912, Pt. I, p. 364.

The Lieutenant-Governorships of Bengal and of Eastern Bengal and Assam have ceased to exist from the 1st April 1912. For power to constitute Legislative Councils for provinces under Chief Commissioners, see the Government of India Act, 1912, (2 & 3 Geo. 5, c. 6), s. 3, *post*.

Constitution  
of such  
Councils, etc.

45. Whenever such proclamation as aforesaid shall have been issued regarding the said division or territories respectively, the Lieutenant-Governor thereof shall nominate, for his assistance in making laws and regulations, such number of Councillors as shall be in such proclamation specified :

Provided that not less than one-third of such Councillors shall in every case be non-official persons as hereinbefore described, and that the nomination of such Councillors shall be subject to the sanction of the Governor General : and

Provided further that at any meeting of any such Council from which the Lieutenant-Governor shall be absent, the Member highest in official rank among those who may hold office under the Crown shall preside ;

1 \* \* \* \*

and in any case of difference of opinion at any meetings of such Council for making laws and regulations, where there shall be an equality of voices, the Lieutenant-Governor, or such Member highest in official rank as aforesaid then presiding, shall have two votes or the casting vote.

The expression "Councillor" is, it will be seen, introduced in connection with the local Legislative Councils of those Provinces in which there were no Executive Councils, *i.e.*, in connection with local legislatures other than those of Madras and Bombay. The expression "Additional Councillor" has already been used in s. 9, *ante*, in connection with the Governor General's Executive Council.

Certain provisions of this section other than those expressly repealed must be taken to be repealed by implication by the Indian Councils Act, 1909 (9 Edw. 7, c. 4). The number of Councillors or Members is now provided for by the Regulations made under that statute—see s. 1 (2) of 1909, and not by the proclamation; see proclamation constituting the province of Bihar and Orissa, *Gazette of India*, 1912, Pt. I, p. 364. It has been held that the provision, in the first proviso, requiring the Governor General's sanction must be regarded as superseded by the Regulations, and that therefore, notwithstanding s. 1 of the Act of 1909 which enacts that references in the Act of 1861 to the nomination of Members shall be construed as including references to the election of elected Members, the Governor General's sanction is not required to the election of Members for these Councils, such sanction being necessary only in cases where it is required by the Regulations. See Legislative Department's unofficial No. 755 of 1909.

The Vice-President appointed under the Indian Councils Act, 1909, s. 4, (9 Edw. 7, c. 4), shall be deemed to be the "member highest in official rank." See also notes under s. 15 above.

Provisions relating to quorum are now laid down in the Regulations relating to the respective Councils.

<sup>1</sup> The words "and the power of making laws and regulations shall be exercised only at meetings at which the Lieutenant-Governor, or some Member holding office as aforesaid, and not less than one-half of the Members of Council so summoned as aforesaid, shall be present;" were repealed by the Indian Councils Act, 1909 (9 Edw. 7, c. 4).

The words "highest in official rank among those present who may hold office under the Crown" must be taken to mean the official Member who holds the highest place in the Warrant of Precedence, and not to be limited in favour of the Advocate-General by the reference to "office under the Crown." As to the latter expression, see the notes to s. 10 above. See Legislative Department's unofficial No. 774 of 1900.

46. It shall be lawful for the Governor General, by proclamation as aforesaid, to constitute from time to time new provinces for the purposes of this Act, to which the like provisions shall be applicable; and further to appoint from time to time a Lieutenant-Governor to any province so constituted as aforesaid, and from time to time to declare and limit the extent of the authority of such Lieutenant-Governor, in like manner as is provided by the Government of India Act, 1854, respecting the Lieutenant-Governor of Bengal and the North-Western Provinces.

17 & 18 Vict.,  
c. 77.

Section 4 of the Government of India Act, 1854, (17 & 18 Vict., c. 77), took power for the Governor General in Council, with the sanction of the Secretary of State, "to declare and limit the extent of the authority of the Governor in Council, Governor or Lieutenant-Governor of Bengal or of Agra or the North-West Provinces." That power is here extended so as to apply in the case of other Provinces.

Legislative Councils for Burma and Eastern Bengal and Assam were established by proclamations under this section on the 1st May, 1897, and the 16th October, 1905—see notes to ss. 44 and 45 above.

For form of notification, see App. IX, No. 14, *post*. For digest and notes, see *Libert*, pp. 216-218.

47. It shall be lawful for the Governor General in Council, by such proclamation as aforesaid, to fix the limits of any presidency, division, province or territory in India for the purposes of this Act, and further by proclamation to divide or alter from time to time the limits of any such presidency, division, province or territory for the said purposes:

Provided always that any law or regulation made by the Governor or Lieutenant-Governor in Council of any presidency, division, province or territory shall continue in force in any part thereof which may be severed therefrom by any such proclamation until superseded by law or regulation of the Governor-General in Council, or of the Governor or Lieutenant-Governor in Council of the presidency, division, province or territory to which such parts may become annexed.

It would appear from the context that the power here given was intended to be exercised for purposes of legislation only. Thus, in 1871, the Bombay Legislative Council passed a Bill to bring under the General Regulations and Acts in force in that province certain villages received in exchange from His Highness the Nizam of Hyderabad. It was found that the limits of the province had never been altered under this section so as to include those villages, and the Government of India were advised that the legislation was *ultra vires*—see Legislative Department's A. Pros., August, 1871, Nos. 1—9.



A more general power of defining and altering the limits of provinces is given by s. 4 of the Government of India Act, 1854 (17 & 18 Vict., c. 77), and by s. 4 of the Government of India Act, 1865, (-8 & 29 Vict., c. 17), *post*. For digest and notes, see *Albert*, pp. 216 -218.

Legislative powers of newly constituted local Councils.

48. It shall be lawful for every such Lieutenant-Governor in Council thus constituted to make laws for the peace and good government of his respective division, province or territory ;

and, except as otherwise hereinbefore specially provided, all the provisions in this Act contained respecting the nomination of Additional Members for the purpose of making laws and regulations for the Presidencies of Fort Saint George and Bombay, and limiting the power of the Governors in Council of Fort Saint George and Bombay, for the purpose of making laws and regulations, and respecting the conduct of business in the meetings of such Councils for that purpose, and respecting the power of the Governor General to declare or withhold his assent to laws or regulations made by the Governors in Council of Fort Saint George and Bombay, and respecting the power of Her Majesty to disallow the same shall apply to laws or regulations to be so made by any such Lieutenant-Governor in Council.

Notwithstanding the provisions of s. 29 above, it was held that the Advocate-General of Bengal was not necessarily a Member *ex-officio* of the Legislative Council of the Lieutenant-Governor of Bengal. See Legislative Department's U. O No 614 of 1899. It is expressly provided in the Government of India Act, 1912 [2 & 3 Geo. 5, c. 6, s. 1(2)] that the Advocate-General of Bengal is not necessarily an Additional Member of the Legislative Council of the Governor of Bengal.

Previous assent of Crown to proclamation.

49. Provided always that no proclamation to be made by the Governor General in Council under the provisions of this Act for the purpose of constituting any Council for the presidency, division, provinces or territories hereinbefore named, or any other provinces, or for altering the boundaries of any presidency, division, province or territory, or constituting any new province for the purpose of this Act, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor General.

Supply of office of Governor General in certain cases.

50. If any vacancy shall happen in the office of Governor General of India when no provisional successor shall be in India to supply such vacancy, then, and in every such case, <sup>1</sup>[the Governor of the Presidency of Fort William in Bengal], the Governor of the Presidency of Fort Saint George or the Governor of the Presidency of Bombay, who shall have been first appointed to the office of Governor by Her Majesty,

<sup>1</sup> Inserted by the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6), Sch. Part I, *post*.

shall hold and execute the said office of Governor General of India \* \* \* \* until a successor shall arrive, or until some person in India shall be duly appointed thereto ;

and every such acting Governor General shall, during the time of his continuing to act as such, have and exercise all the rights and powers of Governor General of India, and shall be entitled to receive the emoluments and advantages appertaining to the office by him supplied, such acting Governor General foregoing the salary and allowances appertaining to the office of Governor to which he stands appointed, and such office of Governor shall be supplied for the time during which such Governor shall act as Governor General in the manner directed in s. 63 of the Government of India Act, 1833.

3 & 4 Will. 4,  
c. 85.

"When no provisional successor to the office of Governor General shall be in India, any vacancy occurring in that office will, until the arrival of a successor appointed by His Majesty, be supplied by one of the highest functionaries in India holding office under the immediate appointment of the Crown, and, until he assumes the function of Governor General, the Government will be administered, as heretofore, by the senior Ordinary Member of Council, as would be done under the provisions of the 3rd and 4th Will. 4, c. 85, s. 62, if no provisional successor were on the spot." See s. 37 of the despatch from the Secretary of State (Sir C. Wood, afterwards Lord Hallifax), dated the 9th August, 1861, *post*. Thus Lord Napier of Merchistoun, Governor of Madras, acted as Governor General until the arrival of Lord Northbrook after the assassination of Lord Mayo in 1872; and pending the assumption of office by Lord Napier, Sir John Strachey officiated as Governor General.

Ss. 62 and 63 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), are as follows:—

"62. If any vacancy shall happen in the office of Governor General of India when no provisional or other successor shall be upon the spot to supply such vacancy, then and in every such case the Ordinary Member of Council next in rank to the said Governor General shall hold and execute the said office of Governor General of India and Governor of the Presidency of Fort William in Bengal until a successor shall arrive, or until some other person on the spot shall be duly appointed thereto; and every such acting Governor General shall, during the time of his continuing to act as such, have and exercise all the rights and powers of the Governor General of India, and shall be entitled to receive the emoluments and advantages appertaining to the office by him supplied, such acting Governor General foregoing his salary and allowances of a Member of Council for the same period.

"63. If any vacancy shall happen in the office of Governor of Fort Saint George, Bombay or Agra, when no provisional or other successor shall be upon the spot to supply such vacancy, then and in every such case, if there shall be a Council in the Presidency in which such vacancy shall happen, the member of such Council, who shall be next in rank to the Governor, other than the officer commanding the forces of such Presidency, and if there shall be no Council, then the Secretary of Government of the said Presidency who shall be senior in the said office of Secretary, shall hold and execute the said office of Governor until a successor shall arrive or until some other person on the spot shall be duly appointed thereto; and every such acting Governor shall, during the

<sup>1</sup> The words "and Governor of the Presidency of Fort William in Bengal" were repealed by the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6) Sch. Part II, *post*.

time of his continuing to act as such, receive and be entitled to the emoluments and advantages appertaining to the office by him supplied, such acting Governor foregoing all salaries and allowances by him held and enjoyed at the time of his being called to supply such office."

The Vice President appointed under s. 4 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4), is to be deemed to be the senior Ordinary Member of Council. See note to s. 15 above.

The Governor General of India is no longer Governor of the Presidency of Fort William; see proclamation dated 22nd March, 1912, *Gazette of India*, 1912, Pt. I, p. 363.

Exercise of powers by Governor General before taking seat in Council.

51. If on such vacancy occurring, it shall appear to the Governor, who by virtue of this Act shall hold and execute the said office of Governor General, necessary to exercise the powers thereof before he shall have taken his seat in Council, it shall be lawful for him to make known, by proclamation his appointment, and his intention to assume the said office of Governor General, and after such proclamation and thenceforth until he shall repair to the place where the Council may assemble, it shall be lawful for him to exercise alone all or any of the powers which might be exercised by the Governor General in Council except the power of making laws and regulations;

and all acts done in the exercise of the said powers, except as aforesaid, shall be of the same force and effect as if they had been done by the Governor General in Council:

Provided that all acts done in the said Council after the date of such proclamation, but before the communication thereof to such Council, shall be valid, subject nevertheless to revocation or alteration by such Governor who shall have so assumed the said office of Governor General;

and from the date of the vacancy occurring until such Governor shall have assumed the said office of Governor General, the provisions of section 62 of the Government of India Act, 1833, shall be and the same are declared to be applicable to the case. 3 & 4 Will.  
4, c. 85.

For s. 62 of the Statute of 1833 see the notes to s. 50 above. A similar provision enabling a Governor General elect to assume office before he has taken his seat in Council is to be found in s. 63 of the Government of India Act, 1858 (21 & 22 Vict., c. 106).

Saving of powers of Crown and Secretary of State in Council.

52. Nothing in this Act contained shall be held to derogate from or interfere with (except as hereinbefore expressly provided) the rights vested in Her Majesty, or the powers of the Secretary of State for India in Council in relation to the Government of Her Majesty's dominions in India, under any law in force at the date of the passing of this Act;

and all things which shall be done by Her Majesty, or by the Secretary of State as aforesaid, in relation to such Government, shall have the same force and validity as if this Act had not been passed.

53 Wherever any act or thing is by this Act required or authorized to be done by the Governor General or by the Governors of the Presidencies of Fort Saint George and by Bombay in Council, it is not required that such act or thing should be done at a meeting for making laws and regulations unless where expressly provided.

Meaning of  
term "in  
Council."

54. [*Rep. by the Statute Law Revision Act, 1875 (38 & 39 Vict., c. 66).*]

This section provided for the coming into operation of the Statute as soon as it was published by the Governor General in Council by proclamation. It was so published in the *Calcutta Gazette Extraordinary* on the 16th November, 1861.

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## THE GOVERNMENT OF INDIA ACT, 1865.

(28 & 29 Vict., c. 17.)

An Act to enlarge the powers of the Governor General of India in Council at meetings for making Laws and Regulations, and to amend the Law respecting the Territorial Limits of the several Presidencies and Lieutenant-Governorships in India.

[9th May, 1865.]

Power to make laws for all British subjects in feudatory states of India.

1. The Governor General of India shall have power at meetings for the purpose of making laws and regulations to make laws and regulations for all British subjects of Her Majesty within the dominions of princes and states in India in alliance with Her Majesty whether in the service of the Government of India or otherwise.

S. I to be read as part of s. 22 of Indian Councils Act, 1861.

2. The preceding section shall be read with, and taken as part of, section 22 of the said Indian Councils Act, 1861.

24 & 25  
Vict., c. 67

The Act of 1861, *ante*, was recited in the preamble, which has been repealed and omitted.

3. [*Rep. by the Statute Law Revision Act, 1878 (41 & 42 Vict., c. 79).*]

This section repealed s. 18 of the Government of India Act, 1853 (16 & 17 Vict., c. 95), and was itself repealed as being spent.

Power to appoint territorial limits of provinces.

4. It shall be lawful for the Governor General of India in Council from time to time to declare and appoint, by proclamation, what part or parts of the Indian territories for the time being under the dominion of Her Majesty shall be or continue subject to each of the Presidencies and Lieutenant-Governorships for the time being subsisting in such territories, and to make such distribution and arrangement, or new distribution and arrangement, of such territories into or among such Presidencies and Lieutenant-Governorships as to the said Governor General in Council may seem expedient.

*Cf.* the provisions of s. 47 of the Indian Councils Act, 1861, (24 & 25 Vict., c. 67), *ante*. See, too s. 4 of the Government of India Act, 1854 (17 & 18 Vict., c. 77), which empowers the Governor General in Council, with the sanction and approbation of the Secretary of State, from time to time, to declare and limit the extent of the authority of the Governor in Council, Governor or Lieutenant-Governor of Bengal, or of Agra or the North-West Provinces who is now or may be hereafter appointed. The Lieutenant-Governorship of Bengal ceased to exist on the 1st April, 1912,

when a Governor in Council was appointed for the Presidency of Fort William. Where, as in the case of the North-West Frontier Province, territories are separated from a Governorship or Lieutenant-Governorship and formed into a Chief Commissionership, action is necessary under s. 3 of the Statute of 1854 above referred to.

5. Provided always that it shall be lawful for the Secretary of State in Council to signify to the said Governor General in Council his disallowance of any such proclamation : Powers of Secretary of State in Council and Crown.

and provided further that no such proclamation for the purpose of transferring an entire zila or district from one Presidency to another, or from one Lieutenant-Governorship to another, shall have any force or validity until the sanction of Her Majesty to the same shall have been previously signified by the Secretary of State in Council to the Governor General.

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EXTRACT FROM  
**THE GOVERNMENT OF INDIA ACT,  
 1869.**

(32 & 33 Vict, c. 97.)

An Act to amend in certain respects the Act for the  
 better Government of India.

\* \* \* \* \*

Appointment  
 of Ordinary  
 Members of  
 Council.

8. The appointments of the Ordinary Members of the Governor General's Council and of the Members of Council of the several Presidencies<sup>1</sup> \* \* \* shall<sup>1</sup> \*  
 \* \* \* be made by Her Majesty by warrant under Her Royal Sign Manual.

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<sup>1</sup> The words "which, by section twenty-nine of the said recited Act\* are to be made by the Secretary of State in Council with the concurrence of a majority of Members present at a meeting," occurred originally after the word "Presidencies," but were repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict, c. 3.) The words "after the passing of this Act," which occurred after the word "shall," were repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict, c. 54).

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\* The Act here referred to was the Government of India Act, 1858 (21 & 22 Vict, c. 106), which provided for the transfer of the East India Company to the Crown.

## THE INDIAN COUNCILS ACT, 1869.

(32 &amp; 33 Vict., c. 98.)

An Act to define the powers of the Governor General of India in Council at meetings for making laws and regulations for certain purposes.

[11th August, 1869]

WHEREAS doubts have arisen as to the extent of power of the Governor General of India in Council to make laws binding upon native Indian subjects beyond the Indian territories under the dominion of Her Majesty:

1. \* \* \* \* The Governor General of India in Council shall have power at meetings for the purpose of making laws and regulations to make laws and regulations for all persons, being native Indian subjects of Her Majesty \* \* \* \* without and beyond as well as within the Indian territories under the dominion of Her Majesty.

Power to make laws for native Indian subjects anywhere.

2. [Rep. by the Statute Law Revision Act, 1883 (46 & 47 Vict., c. 39).]

This section declared that no law already passed by the Governor General, or by the Governor of Madras or Bombay, respectively, in Council should be deemed invalid solely by reason of its having reference to native subjects of Her late Majesty not within the Indian territories under the dominion of Her late Majesty. It was repealed as being spent.

3. Notwithstanding anything in the Indian Councils Act or in any other Act of Parliament contained, any law or regulation which shall hereafter be made by the Governor General in Council in manner in the said Indian Councils Act provided shall not be invalid by reason only that it may repeal or affect any of the provisions of the Government of India Act, 1833, contained in sections 84 and 86 of the said Act.

Power to repeal or amend certain sections of Government of India Act, 1833.

3 & 4 Will.  
4, c. 85.

Ss. 81 to 86 of the Act of 1833 were originally referred to, but the reference to ss. 81, 82, 83 and 85 were repealed by the Statute Law Revision (No. 2) Act 1893 (56 & 57 Vict., c. 54), those sections having been repealed by the Statute Law Revision Act, 1890 (53 & 54 Vict., c. 34). See the notes to s. 22 of the Indian Councils Act, 1861, (24 & 25 Vict., c. 37), *ante*.

<sup>1</sup> The words "From and after the passing of this Act," at the beginning of this section and the words "Her heirs and successors," which occurred after the words "subjects of Her Majesty," were repealed by the Statute Law Revision (No. 2) Act, 1893 (56 & 57 Vict., c. 54).



# THE GOVERNMENT OF INDIA ACT, 1870.

(53 Vict., c. 3.)

An Act to make better provision for making laws and regulations of certain parts of India, and for certain other purposes relating thereto.

[25th March, 1870.]

WHEREAS it is expedient that provision should be made to enable the Governor General of India in Council to make Regulations for the peace and good government of certain territories in India otherwise than at meetings for the purpose of making laws and regulations held under the provisions of the Indian Councils Act, 1861, and also for certain other purposes connected with the Government of India: 34 & 25  
Vict., c. 67.

Power for  
Executive  
Government  
to make  
Regulations  
for certain  
tracts.

1. Every Governor of a Presidency in Council, Lieutenant-Governor or Chief Commissioner, whether the Governorship or Lieutenant-Governorship or Chief Commissioner-ship be now in existence or may hereafter be established, shall have power to propose to the Governor General in Council drafts of any Regulations, together with the reasons for proposing the same, for the peace and government of any part or parts of the territories under his government or administration to which the Secretary of State for India shall from time to time by resolution in Council, declare the provisions of this section to be applicable from any date to be fixed in such resolution;

and the Governor General in Council shall take such draft and reasons into consideration;

and when any such draft shall have been approved of by the Governor General in Council, and shall have received the Governor General's assent, it shall be published in the *Gazette of India* and in the local Gazette, and shall thereupon have like force of law and be subject to the like disallowances as if it had been made by the Governor General of India in Council at a meeting for the purpose of making laws and regulations.

The Secretary of State for India in Council may from time to time withdraw such power from any Governor, Lieutenant-Governor or Chief Commissioner, on whom it has been conferred, and may from time to time restore the same as he shall think fit.

This Statute, which was the outcome of a despatch from the Government of India to the Secretary of State, dated the 10th January

1868,\* was intended to provide a more summary legislative procedure, but not in any way to increase or diminish the legislative powers of the Governor General in Council. The expression "like force of law" means precisely the same legal operation or effect as the operation or effect of an Act of the Governor General in Council passed at a meeting for the purpose of making laws and regulations—see Legislative Department's U. O. No. 1081 of 1877.

As to the expression "Regulation," see the first note to s. 10 of the Indian Councils Act, 1861. *ante*, also s. 3(46) of the General Clauses Act, 1897 (X of 1897), which defines it as meaning a "Regulation made under the Government of India Act, 1870." Sir A. Miller (Law Member) thought that an Act should not be amended by a Regulation—see Legislative Department's U. O. No. 95 of 1895. An earlier Law Member, Sir A. Scoble, on the other hand, objected to a Regulation being amended by an Act—see the notes in Legislative Department's Pros. April, 1891, Nos. 393—446. In practice, however, Acts are frequently amended by Regulations, and *vice versa*—see Legislative Department's U. O. No. 50 of 1901.

For the places to which this section has been declared applicable, see Appendix B to the Scheduled Districts Act, 1874 (XIV of 1874), published among the General Acts, Vol. II. Such places become "Scheduled Districts"—see s. 1 of the Scheduled Districts Act, 1874, (XIV of 1874), and s. 3 (49) of the General Clauses Act, 1897 (X of 1897).

There has been considerable divergence of opinion on the question whether the application of a Regulation is, or is not, strictly territorial—see Legislative Department's U. O. Nos. 255 of 1898 and 236 of 1899. The view which appears on the whole to have prevailed, is that there is no such territorial restriction, and that the only limitation is that the Regulation must be conceived in the interests of "the peace and government" of a tract to which this Statute has been made applicable. This is in accord with actual practice, reaching back to some of the earliest, and extending to some of the latest, Regulations made under the Statute. Thus s. 15 of the Andaman and Nicobar Islands Regulation, 1874 (IV of 1874), enacts that "the Governor General in Council may from time to time empower any Court or authority within British India *and beyond the limits of the settlement* to confirm and modify or reverse any order or sentence passed in any criminal trial by any officer within such Settlement;" by s. 76 of the Arakan Hills Civil Justice Regulation, 1874 (VIII of 1874), the Judicial Commissioner (sitting in Rangoon) was empowered to call up appeals; by s. 4 of the Arakan Hill District Laws Regulation, 1874 (IX of 1874), the Recorder of Rangoon was invested with certain of the powers of a High Court in relation to Arakan; by the Ajmer Courts Regulation, 1875 (I of 1875), certain powers were conferred on the High Court of Judicature at Allahabad in connection with cases from Ajmer-Merwara; s. 86 of the Tarai Regulation, 1876 (IV of 1876) empowers the Local Government to direct the transfer of any civil or revenue suit or appeal from any court having jurisdiction under that Regulation to the High Court of Judicature or to any other court in the North-Western Provinces, and enacts that "the court to which such suit or appeal is transferred shall proceed to determine the same, and the decree passed by it shall be open to the same appeal as are the decrees of the court by which the same shall be passed;" ss. 21 and 23 of the Ajmer Courts Regulation, 1877 (I of 1877), confer powers of appeal and reference in respect of cases from Ajmer-Merwara on the High Court at Allahabad; under s. 4 of the Southal Parganas Justice Regulation, 1893 (V of 1893), the High Court of Judicature at Fort

\* The despatch, which was drafted by Sir H. S. Maine, is to be found in Minute No. 69 at pages 157-158 of the Collection of that Law Member's Minutes.

William is given certain powers, and it is provided that the Commissioner of Bhagalpur may transfer to that High Court any criminal case pending before him which should, in his opinion, be disposed of by it; under s. 14 (3) of the same Regulation the Calcutta High Court is deemed to be, for the purposes of the Indian Divorce Act (IV of 1869), the High Court for the Sonthal Parganas; and by s. 7 (3) of the British Baluchistan Civil Justice Regulation, 1896 (IX of 1896), the Chief Court of the Punjab is similarly declared to be the High Court in divorce proceedings for British Baluchistan. Such provisions have been acted upon; and the view that they are within the scope of the law-making power conferred by this Statute has not so far, except by the Chief Court of the Punjab in a recent case, been judicially condemned. But the Advocate-General of Bengal (the late Sir C. Paul) once advised to the contrary—see his opinion, dated the 16th September, 1898, in Home Department's Judl. Pros., June, 1899, No. 101, and recently a full bench of the Punjab Chief Court held that the Court had no jurisdiction to hear an appeal transferred to it, under a Regulation not applicable to the Punjab—See Legislative Department's U. O. Nos. 437 of 1906 and 50 of 1907.

Merely formal amendments may be made by the Government of India, without reference to the Local Government concerned, in the draft of a Regulation proposed under this section; but, where material amendments affecting the substance are deemed necessary, the Regulation should be sent back to be proposed afresh after revision. For a draft altered as to form and forthwith passed, see Legislative Department's U. O. No. 124 of 1873: for a draft sent back for revision and re-submission, see Legislative Department's U. O. No. 169 of 1873.

It has always been thought that a draft of a Regulation proposed under this Statute should be considered at a *meeting* of the Executive Council, and r 35 of the *Rules of Business, post*, accordingly makes express provision for this. See the rule and the notes thereunder.

It should be borne in mind that Regulations must be published in the *Gazette of India* and the local official Gazette, and that they do not come into force until they have been published in both. But there are—see the first note to r. 35 of the *Secretariat Instructions, post*, no separate local Gazettes for Ajmer-Merwara and British Baluchistan, and Regulations relating to those Provinces are, perforce, published only in the *Gazette of India*. All the Regulations are, like Acts, numbered consecutively in a separate series for each calendar year.

For form of notification publishing a Regulation, see App. IX, No. 15, *post*. For digest and further critical notes, see *Illert*, pp. 211-212; also Chalmers' *General Clauses Act, 1897*, pp. 58-60.

2. The Governor General shall transmit to the Secretary of State for India in Council an authentic copy of every Regulation which shall have been made under the provisions of this Act;

And all laws or regulations hereafter made by the Governor General of India in Council, whether at a meeting for the purpose of making laws and regulations or under the said provisions, shall control and supersede any Regulation in anywise repugnant thereto which shall have been made under the same provisions.

The necessity for the latter part of this provision is not apparent. It is not digested by Sir C. Illert.

The Secretary of State adopts, with reference to Regulations transmitted to him under this Statute, the procedure described in con-

Copies of  
Regulations  
to be sent to  
Secretary of  
State, etc.

nection with Acts in the notes to s. 21 of the Indian Councils Act, 1861, (24 & 25 Vict., c. 67), *ante*. Copies of his despatches are sent for information to the Local Governments concerned, and, if necessary, to the Foreign Department also.

As to the translation into Urdu and transliteration into Hindi of Regulations, *see* s. 3 of the Legislative Department's letter No. 1207—1218, dated the 22nd May, 1896, quoted in the notes to r. 34 of the *Rules of Legislative Business, post*.

3. Whenever the Governor General in Council shall hold a meeting for the purpose of making laws and regulations at any place within the limits of any territories now or hereafter placed under the administration of a Lieutenant-Governor or a Chief Commissioner, the Lieutenant-Governor or Chief Commissioner respectively shall be *ex-officio* an Additional Member of the Council of the Governor General for that purpose, in excess (if necessary) of the maximum number of twelve specified by the said Act.

Lieutenant-Governors and Chief Commissioners when to be members *ex-officio* of the Governor General's Legislative Council.

As to the maximum number of Additional Members, *see* notes under s. 10 of the Indian Councils Act, 1861, (24 & 25 Vict., c. 67), *ante*. As to Governors, *see* s. 9 of the Indian Councils Act, 1861, (24 & 25 Vict., c. 67), *ante*.

4. [*Rep. by the Statute Law Revision Act, 1883* (46 & 47 Vict., c. 59).]

This section repealed s. 49 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), and was itself repealed as being spent.

5. Whenever any measure shall be proposed before the Governor General of India in Council whereby the safety, tranquillity or interests of the British possessions in India, or any part thereof, are or may be, in the judgment of the said Governor General, essentially affected, and he shall be of opinion either that the measure proposed ought to be adopted and carried into execution, or that it ought to be suspended or rejected, and the majority in Council then present shall dissent from such opinion, the Governor General may, on his own authority and responsibility, suspend or reject the measure in part or in whole, or adopt and carry it into execution ;

Difference between Governor General and Council.

but in every such case any two Members of the dissentient majority may require that the said suspension, rejection or adoption, as well as the fact of their dissent, shall be notified to the Secretary of State for India, and such notification shall be accompanied by copies of the minutes (if any) which the Members of the Council shall have recorded on the subject.

At the instance of Lord Cornwallis in 1786, the Governor General was, by 26 Geo 3, c. 10, empowered to override his Council in special cases and to act on his own responsibility, and the provision was re-enacted by ss. 47, 48 and 49 of the East India Company Act, 1793 (51 Geo. 3, c. 22). That Act conferred a like power on the Governors of Madras and Bombay, and its provisions are still in force—*see* the note to s. 7 of the Indian Councils Act, 1861, (24 & 25 Vict., c. 67) *ante*.

They are, however, in so far as the Governor General is concerned, superseded by s 5 of this enactment; and it was under this that the late Lord Lytton proceeded in March 1879, when he exempted certain imported cotton goods from customs-duty, and was afterwards supported by Her late Majesty's Government. See Finance Department's Pros., June, 1879, Nos. 324—329, and the despatch of the Secretary of State (Lord Cranbrook) No 261, dated the 17th July, 1879. For digest and notes, see *Albert*, pp. 182—184.

Power to appoint natives of India to certain offices.

6. Whereas it is expedient that additional facilities should be given for the employment of natives of India of proved merit and ability in the Civil Service of Her Majesty in India :

Be it enacted, that nothing in the Government of India Act, 1858, or in the Indian Civil Service Act, 1861, or in any other Act of Parliament or other law now in force in India, shall restrain the authorities in India by whom appointments are or may be made to offices, places and employments in the Civil Service of Her Majesty in India from appointing any native of India to any such office, place or employment, although such native shall not have been admitted to the said Civil Service of India in manner in section 32 of the first-mentioned Act provided, but subject to such rules as may be from time to time prescribed by the Governor General in Council, and sanctioned by the Secretary of State in Council, with the concurrence of a majority of members present ; and that for the purpose of this Act the words "native of India" shall include any person born and domiciled within the dominions of Her Majesty in India, of parents habitually resident in India, and not established there for temporary purposes only ;

and that it shall be lawful for the Governor General in Council to define and limit from time to time the qualification of natives of India thus expressed :

Provided that every Resolution made by him for such purpose shall be subject to the sanction of the Secretary of State in Council, and shall not have force until it has been laid for thirty days before both Houses of Parliament.

In order to be a "native of India" within the meaning of this section, it would seem that—

- (a) a person must have been born in India ;
- (b) he must be domiciled in India when the question as to his being a "native of India" arises ; and
- (c) both his parents must, at his birth, have been "habitually resident in India, and not established there for temporary purposes only." See Legislative Department's U. O. No. 93 of 1898.

The definition includes persons born or domiciled in a feudatory state in India. It appears to have been intended to exclude Europeans born in India : otherwise it is difficult to account for the use of the two expressions "domiciled" and "habitually resident." For an instructive case on the subject, see Legislative Department's U. O. No. 302 of 1899, and a note written by the Law Member (now Sir T. Raleigh) on the 16th May of that year.

# THE INDIAN COUNCILS ACT, 1871.

(34 & 35 Vict., c. 34.)

**An Act to extend in certain respects the power of Local Legislatures in India as regards European British subjects.**

[29th June, 1871.]

WHEREAS it is expedient that the power of making laws and regulations conferred on Governors of Presidencies in India in Council by the Indian Councils Act, 24 & 25 Vict., c. 67, section 42, should in certain respects be extended :

1. No law or regulation heretofore made or hereafter to be made by any Governor or Lieutenant-Governor in Council in India in manner prescribed by the aforesaid Act shall be invalid only by reason that it confers on Magistrates, being Justices of the Peace, the same jurisdiction over European British subjects as such Governor or Lieutenant-Governor in Council, by regulations made as aforesaid, could have lawfully conferred or could lawfully confer on Magistrates in the exercise of authority over natives in the like cases.

Power for local legislature to confer jurisdiction over European British subjects.

As to the difficulties which gave rise to the passing of this Act, see Legislative Department's A. Pros., September, 1870, Nos. 7--25.

2. When evidence has been given in any proceeding under this Act before a Magistrate, being a Justice of the Peace, which appears to be sufficient for the conviction of the accused person, being an European British subject, of an offence for which, if a native, he would under existing law be triable exclusively before the Court of Session, or which, in the opinion of the Magistrate, is one which ought to be tried by the High Court, the accused person, if such European British subject, shall be sent for trial by the Magistrate before the High Court.

Committal of accused European British subject to High Court.

This enactment is now reproduced in s. 447 of the Code of Criminal Procedure, 1898 (Act V of 1898), which has taken the place of s. 226 of the Code of Criminal Procedure of 1861 (Act XXV of 1861). It has, therefore not been digested by Sir C. Ilbert. The words "under this Act" seem to mean under such an Act passed by a local legislature as is referred to in s. 1 above.

3. And whereas by an Act passed by the Governor General of India in Council, Indian Act No. XXII of 1870, it is provided that certain Acts heretofore passed by the Governors of Madras and Bombay respectively in Council, and by the Lieutenant-Governor of Bengal in

Power for local legislatures to amend and repeal certain laws.

Council, shall, so far as regards the liability of European British subjects to be convicted and punished thereunder be and be deemed to be as valid as if they had been passed by the Governor General of India in Council at a meeting for the purpose of making laws and regulations :

Be it further enacted that the said Governors and Lieutenant-Governors in Council respectively shall have power to repeal and amend any of the said Acts so declared valid by Acts to be passed under the provisions of the Indian Councils <sup>24 & 25</sup> <sub>Vict., c. 67.</sub> Act.

This enactment has been superseded by s. 5 of the Indian Councils Act, 1892 (55 & 56 Vict., c. 14), *post*.

Act XXII of 1870 (*an Act to confirm certain laws affecting European British subjects*) was repealed by the Code of Criminal Procedure, 1882 (Act X of 1882).

## THE INDIAN COUNCILS ACT, 1874.

(37 &amp; 38 Vict., c. 91.)

## An Act to amend the Law relating to the Council of the Governor General of India.

[7th August, 1874.]

WHEREAS it is expedient to amend the law relating to the Council of the Governor General of India :

1. It shall be lawful for Her Majesty, if she shall see fit, to increase the number of the Ordinary Members of the Council of the Governor General of India to six, by appointing any person from time to time by warrant under Her Royal Sign Manual to be an Ordinary Member of the said Council in addition to the Ordinary Members thereof appointed under section 3 of the Indian Councils Act, 1861, and under section 8 of the Government of India Act, 1869.

Number of  
Ordinary  
Members of  
Governor  
General's  
Council  
may be  
increased.

24 & 25  
Vict., c. 67.  
32 & 33  
Vict., c. 97.

The law for the time being in force with reference to Ordinary Members of the Council of the Governor General of India shall apply to the person so appointed by Her Majesty under this Act.<sup>1</sup> \* \* \*

Under this section the late Sir Andrew Clarke was in 1875 appointed to be the first Public Works Member.

2. Whenever a Member of Council<sup>1</sup> \* \* \* shall have been appointed under the first section of this Act, it shall be lawful for Her Majesty, if she shall see fit, to diminish from time to time the number of the Ordinary Members of the Council of the Governor General of India to five, by abstaining so long as she shall deem proper from filling up any vacancy or vacancies occurring in the offices of the Ordinary Members of the said Council appointed under section 3 of the Indian Councils Act, 1861,<sup>2</sup> and under section 8 of the Government of India Act, 1869,<sup>2</sup> not being a vacancy in the office of the Ordinary Members of Council required by law to be a barrister or a member of the faculty of advocates of Scotland ;

Number of  
Members of  
Council  
may be  
subsequently  
diminished.

24 & 25  
Vict., c. 67.  
32 & 33  
Vict., c. 97.

and whenever the Secretary of State for India shall have informed the Governor General of India that it is not the intention of Her Majesty to fill up any vacancy, no temporary appointment shall be made to such vacancy under section 27 of the Indian Councils Act, 1861<sup>2</sup> ;

<sup>1</sup> The words " who shall be called the Members of Council for public works purposes " in s. 1, and the words " for public works purposes " in s. 2 were repealed by the Indian Councils Act, 1904, s. 1 (4 Edw. 7, c. 26).

<sup>2</sup> See ante.



and if any such temporary appointment shall have been made previously to the receipt of such information, the tenure of office of the person temporarily appointed shall cease and determine from the time of the receipt of such information by the Governor General.

When the first Public Works Member was appointed under s. 1 above, there were separate Members in charge of the Home and Revenue Departments; but on the retirement of one of these (Mr. Gibbs) on the 1st May, 1885, no steps were taken to fill up the vacancy, the Home and Revenue Departments were placed under one Councillor, and the number of Ordinary Members again became five. This arrangement continued till 1904, when all reference to "public works purposes" in the Statute was repealed by the Indian Councils Act, 1904 (4 Edw. 7, c. 26), the Public Works Member disappeared, and a sixth Member was appointed for the new Department of Commerce and Industry. For the existing arrangement of Departments, see the note to s. 2 of the *Rules of Business, post*.

Not to affect  
power of  
Governor  
General in  
respect of  
his Council.

3. Nothing in this Act contained shall affect the provisions of section 8 of the Indian Councils Act, 1861,<sup>1</sup> or the 24 & 25 provisions of section 5 of the Government of India Act, 1870,<sup>1</sup> or any power or authority vested by law in the Governor General of India in respect of his Council or of the Members thereof.

Vict., c. 67,  
33 Vict., c. 3.

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<sup>1</sup> See *ante*.

## THE INDIAN COUNCILS ACT, 1892.

(55 &amp; 56 Vict., c. 14.)

## An Act to amend the Indian Councils Act, 1861.

[20th June, 1892.]

For the despatch of the Secretary of State (Lord Cross) transmitting this Statute to the Government of India, *see* App. III.

1. [*Provisions for enlargement of Legislative Councils, Rep. 9 Edw. 7, c. 4, s. 8 (3).*]

Provision for the enlargement of the Legislative Councils is now contained in the Indian Councils Act, 1909 (9 Edw. 7, c. 4), and the Regulations made thereunder.

2. [*Modification of Indian Councils Act, 1861 (24 & 25 Vict., c. 67), as to business at legislative meetings, Rep. 9 Edw. 7, c. 4, s. 8 (3).*]

Provision for the extension of business of Legislative Councils is now contained in the Indian Councils Act, 1909, s. 5 (9 Edw. 7, c. 4), and the Rules made thereunder.

24 & 25  
Vict., c. 67.

3 & 4 Will.  
4, c. 85.  
16 & 17  
Vict., c. 95.

3. It is hereby declared that in the twenty-second section of the Indian Councils Act, 1861, it was and is intended that the words "Indian territories now under the dominion of Her Majesty" should be read and construed as if the words "or hereafter" were and had at the time of the passing of the said Act been inserted next after the word "now;" and further, that the Government of India Act, 1853, and the Government of India Act, 1853, respectively, shall be read and construed as if at the date of the enactment thereof respectively it was intended and had been enacted that the said Acts respectively should extend to and include the territories acquired after the dates thereof respectively by the East India Company, and should not be confined to the territories at the dates of the said enactments respectively in the possession and under the Government of the said Company.

Construction of certain provisions in Indian Councils Act, 1861, and Government of India Act, 1853, and 1853.

4. 1\* \* \* \*

(1) If any Additional Member of Council, or any Member of the Council of a Lieutenant-Governor \* \* \* \*  
shall be absent from India or unable to attend to the duties of his office for a period of two consecutive months,

Power to fill up vacancies in Legislative Councils.

<sup>1</sup>The words "Sections 13 and 32 of the Indian Councils Act, 1861, are hereby repealed, and it is enacted that" were repealed (U. K.) by 8 Edw. 7, c. 49 (S. L. R.)

<sup>2</sup>The words "appointed under the said Act or this Act," were repealed by the Indian Councils Act, 1909 (9 Edw. 7, c. 4).

it shall be lawful for the Governor General, the Governor or the Lieutenant-Governor, to whose Council such Additional Member or Members may have been nominated (as the case may be), to declare, by a notification published in the Government Gazette, that the seat in Council of such person has become vacant :

1\* \* \* \*

This provision applies also to elected Members : *see* Indian Councils Act, 1909 (9 Edw. 7, c. 4). s. 1, *post*.

Provisions for the filling up of casual vacancies and the term of office of persons appointed to fill such vacancies are now contained in the Regulations made under the Indian Councils Act, 1909 (9 Edw. 7, c. 4).

See the provisos to ss. 10 and 29 of the Indian Councils Act, 1861, *ante*, also the notes to s. 11. The words "for a period of two consecutive months" in clause (1) appear to qualify absence from India as well as inability to attend to duty—*see* Legislative Department's U. O. No. 195 of 1905.

Powers of  
local  
legislatures  
to amend  
existing law.

5. The local legislature of any province in India may from time to time, by Acts passed under and subject to the provisions of the Indian Councils Act, 1861, and with the previous sanction of the Governor General, but not otherwise, repeal or amend as to that province any law or regulation made either before or after the passing of this Act by any authority in India other than that local legislature :

Provided that an Act or a provision of an Act, made by a local legislature, and subsequently assented to by the Governor General in pursuance of the Indian Councils Act, 1861, shall not be deemed invalid by reason only of its requiring the previous sanction of the Governor General under this section.

The power of sanction conferred by this section is conferred on the Governor General personally. In this connection, see the notes to ss. 40 and 42 of the Indian Councils Act, 1861, *ante*. The point is by no means free from difficulty, but the result of the two Statutes seems to be that laws or regulations, if made by other authorities in India before the commencement of the Statute of 1861, may be repealed or amended by a local Council without the previous sanction of the Governor General, but, if made after that, ought not to be affected by a local legislature without such sanction. *See* the notes to Legislative Department's A. Pros., October, 1899, Nos. 26—35.

Definition

6. In this Act—

the expression "local legislature" means—

- (1) the Governor in Council for the purpose of making laws and regulations of the respective provinces of Fort St. George and Bombay ; and

<sup>1</sup> Paragraph (2) "providing for the nomination of persons for the filling up of vacancies occurring by absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted and the term of office of the persons so nominated," was repealed by the Indian Councils Act, 1909 (9 Edw. 7, c. 4).

- (2) the Council for the purpose of making laws and regulations of the Lieutenant-Governor of any province to which the provisions of the Indian Councils Act, 1861, touching the making of laws or regulations, have been or are hereafter extended or made applicable :

the expression "province" means any presidency, division, province or territory over which the powers of any local legislature for the time being extend.

As to the Legislative Council of the Governor of Fort William, see the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6), s. 1, *post*.

For general purposes, the expression "Province" is defined by s. 3 (43) of the General Clauses Act, 1897 (X of 1897), as meaning the territories for the time being administered by a Local Government.

7. Nothing in this Act shall detract from or diminish *Saving.* the powers of the Governor General in Council at meetings for the purpose of making laws and regulations.

8. This Act may be cited as the Indian Councils Act, *Short title.* 1892; and the Indian Councils Act, 1861, and this Act may be cited together as the Indian Councils Acts, 1861 and 1892.

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# THE INDIAN COUNCILS ACT, 1909.

[9 *Edw. 7, C. 4*]

An Act to amend the Indian Councils Acts, 1861 and 1892, and the Government of India Act, 1833.

[25th May, 1909.]

For the despatch from the Secretary of State (Viscount Morley of Blackburn) transmitting this Statute to the Government of India. see App. VII. As to the date, 15th November, 1909, on which it was brought into operation, see note to s. 8 (2), *below*. For a brief account of the legislation and of the changes made by the Statute, see *Ilbert's Government of India*, supplementary chapter

For the application of the provisions of the Act to the Presidency of Fort William and to Chief Commissionerships, see the Government of India Act, 1912, (2 & 3 Geo. 5, c. 6), *post*.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :—

Amendment  
of constitu-  
tion of  
Legislative  
Councils.

1. (1) The additional members of the Councils for the purpose of making laws and regulations (hereinafter referred to as Legislative Councils), of the Governor General and of the Governors of Fort Saint George and Bombay, and the Members of the Legislative Councils already constituted, or which may hereafter be constituted, of the several Lieutenant-Governors of Provinces, instead of being all nominated by the Governor General, Governor or Lieutenant-Governor in manner provided by the Indian Councils Acts, 1861 and 1892, shall include members so nominated and also members elected in accordance with regulations made under this Act, c. 14. 24 & 25 Vict.,  
c. 67  
55 & 56 Vict.,  
c. 14. and references in those Acts to the members so nominated and their nomination shall be construed as including references to the members so elected and their election.

(2) The number of additional members or members so nominated and elected, the number of such members required to constitute a quorum, the term of office of such members and the manner of filling up casual vacancies occurring by reason of absence from India, inability to attend to duty, death, acceptance of office, or resignation duly accepted, or otherwise, shall, in the case of each such Council, be such as may be prescribed by regulations made under this Act :

Provided that the aggregate number of members so nominated and elected shall not, in the case of any Legislative Council mentioned in the first column of the First

Schedule to this Act, exceed the number specified in the second column of that Schedule.

As to the effect of the passing of this Act on the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), see note to s. 45 of that Act, *ante*.

Statutory recognition is here given to the expression "Legislative Council" to denote the "Council for the purpose of making laws and regulations."

For provision for the constitution of the Legislative Council of the newly created Governor of the Presidency of Fort William and for power to create Legislative Councils for Provinces under Chief Commissioners: see the Government of India Act, 1912, (2 & 3 Geo. 5, c. 6), s. 3, *post*.

The maximum number of elected and nominated members of each of the Legislative Councils of the Governor of Bengal and the Lieutenant-Governor of Bihar and Orissa is fixed at fifty: see First Schedule as amended by the Government of India Act, 1912, (2 & 3 Geo. 5, c. 6), s. 4 and Schedule, *post*.

2. (1) The number of ordinary members of the Councils of the Governors of Fort Saint George and Bombay shall be such number not exceeding four as the Secretary of State in Council may from time to time direct, of whom two at least shall be persons who at the time of their appointment have been in the service of the Crown in India for at least twelve years.

Constitution and procedure of Executive Councils of Governors of Fort Saint George and Bombay.

(2) If at any meeting of either of such Councils there is an equality of votes on any question, the Governor or other person presiding shall have two votes or the casting vote.

These provisions apply also to the executive council of the newly created Governor of the Presidency of Fort William, see the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6), s. 1, *post*.

3. (1) It shall be lawful for the Governor General in Council, with the approval of the Secretary of State in Council, by proclamation, to create a Council in the Bengal Division of the Presidency of Fort William for the purpose of assisting the Lieutenant-Governor in the executive government of the province, and by such proclamation—

Power to constitute Provincial Executive Councils.

(a) to make provision for determining what shall be the number (not exceeding four) and qualifications of the members of the Council; and

(b) to make provision for the appointment of temporary or acting members of the Council during the absence of any member from illness or otherwise, and for the procedure to be adopted in case of a difference of opinion between a Lieutenant-Governor and his Council, and in the case of equality of votes, and in the case of a Lieutenant-Governor being obliged to absent himself from his Council from indisposition or any other cause.

(2) It shall be lawful for the Governor General in Council, with the like approval, by a like proclamation, to create a Council in any other province under a Lieutenant-Governor for the purpose of assisting the Lieutenant-Governor in the executive government of the province: Provided that before any such proclamation is made, a draft thereof shall be laid before each House of Parliament for not less than sixty days during the session of Parliament, and, if before the expiration of that time an address is presented to His Majesty by either House of Parliament against the draft or any part thereof, no further proceedings shall be taken thereon, without prejudice to the making of any new draft.

(3) Where any such proclamation has been made with respect to any province, the Lieutenant-Governor may, with the consent of the Governor General in Council, from time to time make rules and orders for the more convenient transaction of business in his Council, and any order made or act done in accordance with the rules and orders so made shall be deemed to be an act or order of the Lieutenant-Governor in Council.

(4) Every member of any such Council shall be appointed by the Governor General, with the approval of His Majesty, and shall, as such, be a member of the Legislative Council of the Lieutenant-Governor, in addition to the member nominated by the Lieutenant-Governor and elected under the provisions of this Act.

The Lieutenant-Governorship of Bengal ceased to exist on the 1st April, 1912; the provisions of s. 3 (1) regarding the creation and constitution of an Executive Council have been made applicable to the newly created Lieutenant-Governorship of Bihar and Orissa, *see* the Government of India Act, 1912, (2 & 3 Geo. 5, c. 6) s. 2, *post*, and an Executive Council was constituted in that province with effect from the 1st August, 1912, by proclamation issued under Home Department Notification No. 1628, dated 1st August, 1912. Members of the Executive Council for Bihar and Orissa were appointed by the Governor General on the same date by Home Department Notification No. 1629 of that date. For Form of Proclamation *see* App. IX, No. 14A. For Form of Notification appointing Members of the Executive Council of a Lieutenant-Governor, *see* App. IX, No. 14B.

Section 3 (3) is practically a reproduction of ss. 8 and 28 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), the object of which, as explained in paragraphs 7, 8 and 29 of Sir Charles Woods' despatch of the 9th August, 1861, was to provide for the more convenient transaction of business by abolishing the cumbrous mode under which every paper had to be seen and every order had to be approved by every member; a rule providing that business of any particular class (making of appointments) should be assigned to the Lieutenant-Governor alone would not be an illegal rule. But the Home Member (Hon'ble Sir J. L. Jenkins) held, and Council agreed with him, that the intention in constituting an Executive Council under the section being that the administration shall be carried on by the Lieutenant-Governor in Council, a rule of business providing that business of the most important kind might be transacted by the Lieutenant-Governor alone or by a single member of

Council would be unconstitutional—Legislative Department's unofficial No. 613 of 1910.

4. The Governor General and the Governors of Fort Saint George and Bombay, and the Lieutenant-Governor of every province respectively shall appoint a member of their respective Councils to be Vice-President thereof, and, for the purpose of temporarily holding and executing the office of Governor General or Governor of Fort Saint George or Bombay and of presiding at meetings of Council in the absence of the Governor General, Governor or Lieutenant-Governor, the Vice-President so appointed shall be deemed to be the senior member of Council and the member highest in rank, and the Indian Councils Act, 1861, and sections sixty-two and sixty-three of the Government of India Act, 1833, shall have effect accordingly.

24 & 25 Vict.,  
c. 67.  
3 & 4 Will. 4,  
c. 85.

The provision relating to the appointment of a Vice-President applies also to the Governor of Fort William; see the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6) s. 1, *post*.

For the position of the senior ordinary member as such in the absence of the Vice-President—see notes to ss. 7 and 15 of the Indian Councils Act, 1861, (24 & 25 Vict., c. 67) *ante*.

The power of appointing a member to be Vice-President is vested in the Governor General, Governor or Lieutenant-Governor, as the case may be, personally.

The section only authorises the appointment of a particular named member; it does not permit of the appointment of the member in charge of a particular department *ex-officio* to be Vice-President.

The Vice-President, it will be noted, is Vice-President of the Council and not of the Legislative Council only. For form of notification appointing a Vice-President of the Governor General's Council, see Appendix IX, No. 3A., *post*. The succession list of Vice-Presidents of the Governor General's Council is given below:—

The Hon'ble Sir Herbert H. Risley	(Home Member).
" " " Harvey Adamson	( " " ).
" " " J. L. Jenkins	( " " ).
" " " Guy Fleetwood Wilson	(Finance Member).

5. (1) Notwithstanding anything in the Indian Councils Act, 1861, (24 & 25 Vict., c. 67) the Governor General in Council, the Governors in Council of Fort Saint George and Bombay, respectively, and the Lieutenant-Governor or Lieutenant-Governor in Council of every province, shall make rules authorising at any meeting of their respective Legislative Councils the discussion of the annual financial statement of the Governor General in Council or of their respective Local Governments, as the case may be, and of any matter of general public interest, and the asking of questions, under such conditions and restrictions as may be prescribed in the rules applicable to the several Councils.

Power to  
extend busi-  
ness of  
Legislative  
Councils.

(2) Such rules as aforesaid may provide for the appointment of a member of any such Council to preside at any



such discussion in the place of the Governor General, Governor or Lieutenant-Governor, as the case may be, and of any Vice-President.

(3) Rules under this section, where made by a Governor in Council, or by a Lieutenant-Governor or a Lieutenant-Governor in Council, shall be subject to the sanction of the Governor General in Council, and where made by the Governor General in Council, shall be subject to the sanction of the Secretary of State in Council, and shall not be subject to alteration or amendment by the Legislative Council of the Governor General, Governor or Lieutenant-Governor.

For the rules made under this section by the Governor General in Council see *post*.

These rules cannot be changed by executive order; it is, however, provided in all these rules that they may be suspended by the President in any case—Legislative Department un-official 78 of 1911.

The rule-making power under this section covers rules for the conduct of business at meetings of the Legislative Council when the particular classes of business mentioned in the section are being transacted notwithstanding the fact that the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), s. 18 and s. 37 provides for the making and amendment of rules for the conduct of business—see Legislative Department's un-official No. 546 of 1909.

A rule made under s. 5 (2) cannot authorise the appointment of a member to preside at meetings of the Council when legislative business proper is being transacted; such a rule can only authorise the appointment of a member to preside at the discussions mentioned in the section in the place of the Governor General, Governor or Lieutenant-Governor as the case may be, and of any Vice-President—Legislative Department un-official No. 644 of 1909.

Power to  
make regula-  
tions.

6. The Governor General in Council shall, subject to the approval of the Secretary of State in Council, make regulations as to the conditions under which and manner in which persons resident in India may be nominated or elected as members of the Legislative Councils of the Governor General, Governors and Lieutenant-Governors, and as to the qualifications for being, and for being nominated or elected, a member of any such Council, and as to any other matter for which regulations are authorised to be made under this Act, and also as to the manner in which those regulations are to be carried into effect. Regulations under this section shall not be subject to alteration or amendment by the Legislative Council of the Governor General.

The Law officers of the Crown have advised that it is not open to the Government of India to reserve power to prescribe by notifications the procedure in respect of details for carrying out the election of members of the Imperial or Provincial Councils, and that all regulations for those purposes must be approved by the Secretary of State in Council, and laid before both Houses of Parliament—Home Department, Public A. Proceedings, August 1909, Nos. 222–227. The Regulations made under this section accordingly incorporate (in Schedules annexed to them) rules containing every detail of election procedure and all forms.

The only qualification for being nominated or elected which the section lays down is that the person must be resident in India; this qualification was required by s. 1 (3) of the Indian Councils Act, 1892, (55 & 56 Vict., c. 14), for nominations under that Act; as to whether a person who is ordinarily resident in India, but is at the time temporarily out of India, may be regarded as resident in India, *see* Legislative Department's unofficial Nos. 314, 316, 422 of 1897 and Nos. 709 and 807 of 1900. For other qualifications *see* Regulations.

7. All proclamations, regulations and rules made under this Act, other than rules made by a Lieutenant-Governor for the more convenient transaction of business in his Council, shall be laid before both Houses of Parliament as soon as they may be after they are made.

8. (1) This Act may be cited as the Indian Councils Act, 1909, and shall be construed with the Indian Councils Acts, 1861 and 1892, and those Acts, the Indian Councils Act, 1869, the Indian Councils Act, 1871, the Indian Councils Act, 1874, the Indian Councils Act, 1904, and this Act may be cited together as the Indian Councils Acts, 1861 to 1909.

32 & 33 Vict.,  
c. 98  
33 & 34 Vict.,  
c. 34.  
37 & 38 Vict.,  
c. 91.  
4 Edw. 7,  
c. 26.

Short title  
construction,  
commence-  
ment and  
repeal.

(2) This Act shall come into operation on such date or dates as the Governor General in Council, with the approval of the Secretary of State in Council, may appoint, and different dates may be appointed for different purposes and provisions of this Act and for different Councils.

On the date appointed for the coming into operation of this Act as respects any Legislative Council, all the nominated members of the Council then in office shall go out of office, but may, if otherwise qualified, be renominated or be elected in accordance with the provisions of this Act.

(3) The enactments mentioned in the Second Schedule to this Act are hereby repealed to the extent mentioned in the third column of that Schedule.

The Act came into operation for all purposes and for all Councils on the 15th November, 1909.

## SCHEDULES.

## Section 1.

## FIRST SCHEDULE.

*Maximum Numbers of Nominated and Elected Members of  
Legislative Councils.*

Legislative Council.	Maximum number.
Legislative Council of the Governor General . . .	60
Legislative Council of the Governor of Fort Saint George.	50
Legislative Council of the Governor of Bombay	50
<sup>1</sup> [Legislative Council of the Governor of Fort William in Bengal.]	50
* * * *	
Legislative Council of the Lieutenant-Governor of the United Provinces of Agra and Oudh.	50
* * * *	
<sup>1</sup> [Legislative Council of the Lieutenant-Governor of Bihar and Orissa]	50
Legislative Council of the Lieutenant-Governor of the Province of the Punjab.	30
Legislative Council of the Lieutenant-Governor of the Province of Burma.	30
Legislative Council of the Lieutenant-Governor of any Province which may hereafter be constituted.	30

<sup>1</sup> Inserted by the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6) Sch., Part I, *post*.

<sup>2-3</sup> The words "Legislative Council of the Lieutenant-Governor of the Bengal Division of the Presidency of Fort William . . . 50" and "Legislative Council of the Lieutenant-Governor of the Province of Eastern Bengal and Assam . . . 50" were repealed by the Government of India Act, 1912 (2 & 3 Geo. 5, c. 6) Sch., Part II, *post*.

## SECOND SCHEDULE.

Section 8.

*Enactments repealed.*

Session and Chapter.	Short Title.	Extent of Repeal.
24 & 25 Vict., c. 67.	The Indian Councils Act, 1861.	<p>In section ten, the words "not less than six nor more than twelve in number."</p> <p>In section eleven, the words "for the term of two years from the date of such nomination."</p> <p>In section fifteen, the words from "and the power of making laws and regulations" to "shall be present."</p> <p>In section twenty-nine, the words "not less than four nor more than eight in number."</p> <p>In section thirty, the words "for the term of two years from the date of such nomination."</p> <p>In section thirty-four, the words from "and the power of making laws and regulations" to "shall be present."</p> <p>In section forty-five, the words from "and the power of making laws and regulations" to "shall be present."</p>
55 & 56 Vict., c. 14.	The Indian Councils Act, 1892.	<p>Sections one and two.</p> <p>In section four, the words "appointed under the said Act or this Act" and paragraph (2).</p>

# THE GOVERNMENT OF INDIA ACT, 1912.

(2 & 3 Geo. 5, c. 6)

**An Act to make such amendments in the Law relating to the Government of India as are consequential on the appointment of a separate Governor of Fort William in Bengal, and other administrative changes in the local Government of India.**

[25th June, 1912.]

WHEREAS His Majesty has been pleased to appoint a Governor of the Presidency of Fort William in Bengal as delimited by a proclamation made by the Governor General in Council and dated the twenty-second day of March nineteen hundred and twelve :

And whereas the Governor General in Council by two further proclamations of the same date has constituted a new province under a Lieutenant-Governor, styled the province of Bihar and Orissa, and has taken the province of Assam under the immediate authority and management of the Governor General in Council :

And whereas it is expedient to declare what powers are exerciseable by the Governor and Governor in Council of the presidency of Fort William in Bengal and to make other provisions with respect to the administrative changes effected as aforesaid :

Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lord's Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. (1) It is hereby declared that the Governor and Governor in Council of the presidency of Fort William in Bengal shall, within that presidency as so delimited as aforesaid, have all the rights, duties, functions, and immunities which the Governors and Governors in Council of the presidencies of Fort St. George and Bombay respectively possess, and all enactments relating to the Governors of those presidencies and the councils (whether for executive or legislative purposes) thereof and the members of those Councils shall apply accordingly to the Governor of the presidency of Fort William in Bengal, and his Council and the members of that Council :

Powers of Governor of Fort William in Bengal.

Provided that—

(a) if the Governor General in Council reserves to himself any powers now exerciseable by him in

relation to the presidency of Fort William in Bengal, those powers shall continue to be exercisable by the Governor General in Council in the like manner and to the like extent as heretofore; and

- (b) it shall not be obligatory to nominate the Advocate-General of the presidency of Fort William in Bengal or any officer acting in that capacity to be a member of the Legislative Council of the Governor of that presidency.

(2) The power of the Governor General in Council under section one of the Indian Presidency Towns Act, 1815, to extend the limits of the town of Calcutta shall be transferred to the Governor in Council of the presidency of Fort William in Bengal.

Under proviso (a) to section 1 (1) the Governor General in Council has reserved to himself all powers which on the 1st August, 1912, were exercisable by him in relation to the High Court of Judicature at Fort William in Bengal. See Home Department Notification No. 1627, dated 1st August, 1912.

2. The provisions of sub-section (1) of section three of the Indian Councils Act, 1909 (which relate to the constitution of provincial executive councils), shall apply to the province of Bihar and Orissa in like manner as they applied to the province of the Bengal division of the presidency of Fort William.

Provisions as to the province of Bihar.

See notes under section 3 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4) *ante*.

3. It shall be lawful for the Governor General in Council by proclamation to extend, subject to such modifications and adaptations as he may consider necessary, the provisions of the Indian Councils Acts, 1861 to 1909, touching the making of laws and regulations for the peace and good government of provinces under Lieutenant-Governors (including the provisions as to the constitution of Legislative Councils for such provinces and the business to be transacted therein) to any territories for the time being under a Chief Commissioner, and where such provisions have been applied to any such territories the proviso to section three of the Government of India Act, 1854 (which relates to the alteration of laws and regulations in such territories) shall not apply to those territories.

Creation of Legislative Councils of Chief Commissioners.

For proclamation under this section in respect of the territories under the Chief Commissioner of Assam, see Home Department proclamation, No. 2642, dated the 14th November 1912, *Gazette of India*, 1912, Part I, p. 1383. Sanction of His Majesty is not required to a proclamation under this section but a further proclamation under the Indian Councils Act, 1861, with the sanction of His Majesty, is required for the constitution

of a Legislative Council. See Proclamation No. 7643, *Ibid*, and Papers relating thereto. For the Regulations made under the Indian Councils Act, 1909, for the nomination and election of Members of the Legislative Council of the Chief Commissioner of Assam, see *Gazette of India*, 1912, Part I, pp. 1558, *et. seq.*

Amendment  
and repeal of  
Acts and  
saving.

4. (1) The enactments mentioned in Part I of the Schedule to this Act shall have effect subject to the amendments therein specified, and section fifty-seven of the East India Act, 1793, and section seventy-one of the Government of India Act, 1833 (which relate to the filling up of vacancies in the Indian Civil Service), and the other enactments mentioned in Part II of that Schedule are hereby repealed.

(2) Nothing in this Act or in the said recited proclamations shall affect the power of the Governor General in Council of making new distributions and arrangements of territories into and among the various presidencies and Lieutenant-Governorships, and it is hereby declared that the said power extends to territories under the immediate authority and management of the Governor General in Council as well as to territories subject to the several presidencies and Lieutenant-Governorships.

Short title  
and com-  
mencement.

5. This Act may be cited as the Government of India Act, 1912, and shall come into operation on such day as the Governor General in Council, with the approval of the Secretary of State in Council, may appoint.

This Act came into operation on the 1st August, 1912: See Home Department Notification No. 1626, dated 1st August, 1912.

## SCHEDULE.

### PART I.

#### AMENDMENTS.

In section fifty of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), after the words "then and in every such case," there shall be inserted the words "the Governor of the Presidency of Fort William in Bengal".

In the First Schedule to the Indian Councils Act, 1909 (9 Edw. 7, c. 4), there shall be inserted—

"Legislative Council of the Governor of Fort William in Bengal . . . . .	50
"Legislative Council of the Lieutenant-Governor of Bihar and Orissa . . . . .	50"

## PART II.

## REPEALS.

Sections fifty-three and fifty-seven of the East India Company Act, 1793 (33 Geo. 3, c. 52).

In section sixty-two of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), the words "and Governor of the Presidency of Fort William in Bengal," and section seventy-one of the same Act.

In section fifty of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), the words "and Governor of the Presidency of Fort William in Bengal".

In the First Schedule to the Indian Councils Act, 1909 (9 Edw. 7, c. 4), the following words:—

- |  |      |
|--|------|
| "Legislative Council of the Lieutenant-Governor of the Bengal Division of the Presidency of Fort William . . . . . | 50   |
| "Legislative Council of the Lieutenant-Governor of the Province of Eastern Bengal and Assam . . . . .              | 50 " |



## Rules of Business made under section 8 of the Indian Councils Act, 1861.

[4th September, 1907.]

The following rules for the more convenient transaction of business in the Council of the Governor General were made by the Governor General ( Lord Minto ) under s. 8 of the Indian Councils Act, 1861 ( 24 & 25 Vict., c. 67 ) on the 4th September, 1907, in supersession of all rules and orders previously made for that purpose. Modifications subsequently made have been incorporated with the text.

These rules have statutory force and cannot be altered by a resolution of the Executive Government. See Legislative Department's U. O. No. 460 of 1905.

### RULES OF BUSINESS.

#### *Part I.—Apportionment of Business.*

Distribution  
of business  
among  
Departments.

1. The business of the Government of India shall be classified and distributed among the different Departments under the following heads, and each of the subjects herein-after indicated shall, for the purposes of these rules, be deemed to belong to the Department to which it is allotted in the annexed list:—

#### (A) Home Department.

All business connected with the administration of—

- |   |  |
|---|--|
| (i) The European Vagrancy Act, 1874 (IX of 1874) ;  | } throughout British India and in Berar.   |
| (ii) The Indian Civil Service ;   |  |
| (iii) Internal Politics ;   | } throughout British India, except British Baluchistan and Ajmer-Merwara ; and in Berar. |
| (iv) Escheats and intestate property ;  |  |
| (v) Jails, Reformatory Schools, and Penal Settlements ;   |  |
| (vi) Police (except as regards the Border Military Police in the North-West Frontier Province) ;        |  |
| (vii) Registration ;  |  |
| (viii) The Naturalisation of aliens ;   | } throughout British India, except British Baluchistan and Ajmer-Merwara ; and in Berar. |
| (ix) Law and Justice (except as regards petitions in jirga cases in the North-West Frontier Province) ; |  |

- |  |  |
|--|--|
| (x) The Indian Arms Act, 1878 (XI of 1878) ;       | } throughout British India, except the North-West Frontier Province, British Baluchistan, and Ajmer-Merwara; and in Berar. |
| (xi) The Civil Medical Service ;                   |  |
| (xii) Judicial and administrative establishments ; |  |
- (xiii) The nomination of Members of the Legislative Councils of the Lieutenant-Governors of Bengal, the United Provinces of Agra and Oudh, the Punjab, Burma, and Eastern Bengal and Assam.

The Lieutenant-Governorships of Bengal and Eastern Bengal and Assam have ceased to exist; the province of Bihar and Orissa under a Lieutenant-Governor has been recently created and Assam has been placed under a Chief Commissioner and a Legislative Council has been constituted for it.

### **(B) Department of Revenue and Agriculture.**

All business throughout British India and in all places in Native States administered by the Governor General in Council connected with the administration of—

- (i) Forests and arboriculture ;
- (ii) Land Revenue (except as regards Jagirs in the North-West Frontier Province and British Baluchistan) ;
- (iii) Land surveys ;
- (iv) Agriculture ;
- (v) The Civil Veterinary Administration ;
- (vi) Meteorology ; and
- (vii) Famine.

### **(C) Public Works Department.**

All business throughout British India and in all places in Native States administered by the Governor General in Council connected with—

- (i) Civil Buildings ;
- (ii) Communications, including Tramways within municipal limits ;
- (iii) Irrigation and canals ;
- (iv) Miscellaneous Public Works, including docks and harbours ; and
- (v) Electricity.

**(D) Foreign Department.**

All business connected with—

- (i) External politics ;
- (ii) Relations with Foreign States beyond the limits of India ;
- (iii) the recognition of Consuls ;
- (iv) the grant of passports ;
- (v) the control of relations with Frontier Tribes and of the administration of police and militia employed in connection with such Tribes ;
- (vi) the Political Service ;
- (vii) Relations with Native States and Feudatories within the limits of India ;
- (viii) the Imperial Service Troops and the Imperial Cadet Corps ;
- (ix) the Control of the Administration of the North-West Frontier Province, British Baluchistan, and Ajmer-Merwara in British India, and of all places in Native States in India administered by the Governor General in Council, save in so far as relates to any particular class of business in any of the said territories or places which is by or under any other provision in this rule allotted to another Department ;
- (x) Extradition and extra-territoriality ;
- (xi) Political prisoners ;
- (xii) Political pensions ;
- (xiii) the Chiefs' Colleges ,
- (xiv) Titles ;
- (xv) Ceremonials ; and
- (xvi) the Orders of the Star of India, Indian Empire and Crown of India.

**(E) Finance Department.**

All business throughout British India and in all places in Native States administered by the Governor General in Council connected with the administration of—

- (i) General Finance, that is to say—
  - (a) the Public accounts and estimates ;
  - (b) the Public expenditure ;
  - (c) the Public Ways and Means, including loans to and from the Public Treasury ;

- (d) the management of the Public funds ;
- (e) Taxation ;
- (f) Provincial and local finance ;
- (g) the borrowing of public bodies ; and
- (h) Alienations of revenue and of land :
- (ii) Separate Revenue, that is to say—
  - (a) Opium ;
  - (b) Stamps ;
  - (c) Assessed taxes :
- (iii) Currency and Banking, that is to say—
  - (a) the Mints ;
  - (b) Coinage ;
  - (c) Paper Currency ; and
  - (d) Presidency Banks :
- (iv) Salaries and allowances, that is to say—
  - (a) the pay and allowances of public officers ;
  - (b) Leave to public officers ; and
  - (c) Pensions and gratuities :
- (v) the Civil Account Department, including Treasuries ;
- (vi) Army Finance ; and
- (vii) the Military Accounts Department.

### (F) Army Department.

All business (except Finance) connected with—

- (i) The Army (including the Volunteers) ;
- (ii) Cantonments and the Cantonment Magistrates' Department, throughout British India and, excepting political matters, in all places in Native States administered by the Governor General in Council ;
- (iii) Indian Medical Service ;
- (iv) The Royal Indian Marine ; and
- (v) Marine Surveys and dangers to navigation (corresponding with the hydrographic section of the Admiralty).

### (G) Department of Commerce and Industry.

All business throughout British India, and in all places

in Native States administered by the Governor General in Council, connected with—

- (i) Commerce, that is to say—
  - (a) Trade and Commerce ;
  - (b) Merchandise marks ;
  - (c) Merchant shipping ;
  - (d) Ports, port dues and pilotage ;
  - (e) The lighting of coasts.
- (ii) Customs, including Cotton Duty.
- (iii) Internal Land Trade.
- (iv) Commercial Exhibitions.
- (v) Weights and Measures.
- (vi) The Indian Factories Act, 1881 (XV of 1881).
- (vii) Geology and minerals.
- (viii) Government Coal Mines and Iron Works.
- (ix) Telegraph and telephones.
- (x) The Post Office.
- (xi) The Indian Explosives Act, 1884 (IV of 1884).
- (xii) The Indian Petroleum Act, 1899 (VIII of 1899).
- (xiii) Emigration.
- (xiv) Fisheries.
- (xv) Inventions and Designs.
- (xvi) Stationery and printing.
- (xvii) The supply of stores.
- (xviii) Statistics.
- (xix) Salt, and
- (xx) Excise.

#### (H) Legislative Department.

All business connected with—

- (i) Legislation in the Council of the Governor General ;
- (ii) Legislation in Local Councils ; .
- (iii) Rules for the Conduct of Business in Legislative Councils ; .
- (iv) the Proceedings of Legislative Councils ;

- (v) the publication, translation and supply to Government officers and the public of Acts of the Governor General in Council and Regulations under the Government of India Act, 1870 ;
- (vi) the preparation and publication of Codes, Digests, Lists of Rules and Orders and other similar works ; and
- (vii) the issue of the Indian Law Reports.

Memorials and petitions regarding Acts belong to the Legislative Department—See Home Department's letter No. 22 Public—996-1001, dated the 24th May, 1878.

### (I) Railway Department.

All business connected with—

- (i) Railway questions ;
  - (ii) Tramways outside municipal limits ;
- provided that nothing in these rules shall apply to any business which the Railway Board are competent to dispose of on their own authority and without reference to the Government of India.

### (J) Department of Education.

All business connected with the administration of—

- |  |   |   |
|--|---|---|
| <ul style="list-style-type: none"> <li>(i) Education (except as regards Chiefs' Colleges) ;</li> <li>(ii) Examinations (except as regards Pushtu, Baluchi and any other frontier language in the North-West Frontier Province) ;</li> <li>(iii) Municipalities ;</li> <li>(iv) Local Boards ;</li> <li>(v) Public health and sanitation ;</li> <li>(vi) Records office., and preservation and management of the public records ;</li> <li>(vii) Imperial Library ;</li> <li>(viii) Books and Publications ;</li> <li>(ix) Copyright ;</li> </ul> | } | <p>throughout British India, except British Baluchistan and Ajmer - Merwara and in Berar.</p> |
|--|---|---|

- |   |   |   |
|---|---|---|
| (x) Oriental Languages ;                                      | } | throughout British India and in Berar.  |
| (xi) Archæology and Epigraphy ;                               |   |   |
| (xii) Ecclesiastical matters and the Ecclesiastical Service ; |   |   |
| (xiii) The Census ;   |   |   |
| (xiv) Gazetteers ;  | } | throughout British India, and in all places in Native States administered by the Governor General in Council. |
| (xv) Arts and Museums.  |   |   |

The unspecified heads of work referred to in entry 14 in the statement annexed to the Home Department Resolution Nos. 5475—5507, dated the 9th December 1910, regarding the constitution of the Department of Education, as having been transferred from the Home Department to the Department of Education are the following :—

- (1) Spelling of Indian names.
- (2) Congresses of Orientalists.
- (3) Ethnography.
- (4) Zoological gardens.
- (5) Commemoration of notable buildings.
- (6) Linguistic Survey.

(H. D. Circular letter to Local Governments, etc., Nos. 618—627, dated the 11th March 1911.)

Allotment of business to Governor General and Members.

2. Subject to the provisions of rule 1, the business of the different Departments shall, for the purposes of the first perusal of papers and of the initiation of orders thereon, be allotted to the Governor General and the Members of Council in such manner as the Governor General may, from time to time, direct.

Under existing arrangements one Ordinary Member of Council is in charge of the Department of Revenue and Agriculture and the Public Works Department, and another Ordinary Member is in charge of the Department of Commerce and Industry and the Railway Department, the Home Department, the Finance Department, the Legislative Department and the Department of Education are each allotted to one Ordinary Member ; the Commander-in-Chief in the capacity of Extraordinary Member is at the head of the Army Department, and the Governor General himself takes the portfolio of the Foreign Department.

### *Part II.—Disposal of Business.*

Cases ordinarily to be submitted to Member in charge.

3. Save as otherwise provided by rules 5 (2), 6 and 7, cases shall ordinarily be submitted by the Secretary in the Department to which the subject belongs, for the purposes of the first perusal of papers and of the initiation of orders thereon, to the Member in charge of that Department.

4. Cases of minor importance shall ordinarily be disposed of by, or under the authority of, the Member in charge of the Department to which the subject belongs. Cases of minor importance.

The words "under the authority of" permit of the disposal of the least important cases by Secretaries. See in this connection, the footnote to rule 12, *post*.

5. (1) Any case which is, in the opinion of the Member in charge of the Department to which the subject belongs, of major importance, shall be submitted, with the orders proposed by that Member to the Governor General for opinion. Cases of major importance.

(2) Any case which is of special importance and urgency may be submitted by the Secretary in the Department to which the subject belongs, direct to the Governor General who may either pass orders on it himself, or send it for disposal to the Member in charge of that Department.

A still wider power of reference to the Governor General is conferred by rule 6 below on Secretaries, as to whose position, etc., see the footnote to rule 12, *post* :

Provided that, when a case is so submitted to the Governor General, the Member in charge shall be informed of the fact by the Secretary.

6. Any case may, at any stage, if the Secretary in the Department to which the subject belongs thinks fit, be submitted by him to the Governor General. Submission of any case to Governor General.

See also rule 5 (2) above as to the submission of cases of special importance and urgency to the Governor General in the first instance instead of to the Member in charge.

7. In order to enable the Secretary to the Government of India in the Army Department to discharge the duties imposed upon him by rules 5 (2), 6, 11, and 41— Powers and duties of Secretary in the Army Department.

(1) he shall be a Member of the Advisory Council and of the Mobilization Committee;

(2) all matters entered in a schedule approved by the Governor General shall be referred to him before orders are issued;

(3) he shall be entitled at any stage of the discussion of any subject assigned to the Army Department—

(a) to call for the papers;

(b) to record for the consideration of the Member in charge a note on any matter.

8. The Secretary to the Government of India in the Army Department shall also, for the purposes of sub-section 4, section 26 of the Regimental Debts Act, 1893 (56 Viet., c. 5), and the Regulations made thereunder, be Secretary to the Government of India in the Military Department.



With reference to the position of the Secretary in the Army Department, *see* notes in Legislative Department's U. O. 903 of 1905 and the Secretary of State's Despatch, Military ( Secret ) No. 18 of the 9th February 1906—Army Department, B, Proceedings, July 1906, No. 1354 ( included in above ).

Confirmation  
of capital  
sentences  
passed in  
Andamans.

9. (1) Where under section 13, clause (c) of the Andaman and Nicobar Islands Regulation, 1876,<sup>1</sup> a sentence of death passed by the Court of Session at Port Blair is submitted for the confirmation of the Governor General in Council, the order proposed by the Member in charge of the Home Department shall, in the first instance, be referred for opinion to the Member in charge of the Legislative Department.

(2) If both the Members aforesaid are in agreement as to the order which should be passed, such order shall be carried out, unless, for any special reason or under any other rule, a reference to the Governor General is considered necessary.

(3) If the two members aforesaid are not in agreement, the case shall be submitted to the Governor General for orders.

Proposal to  
overrule  
Local Govern-  
ment.

10. Where it is proposed in any Department to negative the recommendation, or to overrule the decision of a Local Government, the consent of the Governor General shall be obtained before any orders to that effect are issued.

Local Government includes a Chief Commissioner (Home Department Pub. A., September 1898, Nos. 91—110).

In cases where the Government of India, while differing from a Local Government, express their view in the form not of a command but of a suggestion, it is unnecessary merely on this account to submit the case to His Excellency for orders at this stage. Similarly, where the proposals of a Local Government contravene standing orders or accepted principles, and the reply of the Government of India merely refers to such orders (as in cases where the Local Government may wish to anticipate the sanction of the Secretary of State or to give retrospective effect to some financial sanction), it is not necessary merely on this account to take His Excellency's instructions.

<sup>1</sup> The provision referred to, as amended by s. 3 (a) of the Andaman and Nicobar Islands Regulation, 1884 (I of 1884), is as follows :—

"18. The Code of Criminal Procedure (Act X of 1882) shall be subject to the following modifications :—

\* \* \* \* \*

(c) The functions of the High Court as a Court of reference shall be discharged by the Governor General in Council.

\* \* \* \* \*

For the Code of Criminal Procedure here referred to, *see* now the Code of Criminal Procedure, 1898 (Act V of 1898).

11. (1) Every case the subject of which concerns another Department shall, unless it is one of extreme urgency, be referred for consideration to such Department before it is circulated to the Members or brought before a meeting of Council, and before any orders are issued. Inter-departmental reference and differences.

(2) If all the Departments concerned are not in agreement regarding a case dealt with under this rule, it shall be submitted by the Secretary in the Department to which the subject belongs, to the Governor General for orders as to its being brought before a meeting of Council under Part V.

See in this connection rule 15 of the *Secretariat Instructions*, post.

12. Save in cases where an officer has been specially empowered by or under any enactment to sign an order of the Governor General in Council, every order of the Governor General in Council shall be signed by either a Secretary, a Joint Secretary, a Deputy Secretary, an Under-Secretary or an Assistant Secretary to the Government of India, or in the case of the Railway Department, by a Secretary or Assistant Secretary to the Railway Board. Such signature shall be the proper authentication thereof. Authentication of orders.

Section 39 of the East India Company Act, 1793 (33 Geo. 3, c. 52), directs that "all orders and other proceedings of the Governor General and Council of Fort William shall be expressed to be made by the Governor General in Council, and that all orders and other proceedings of the Governors and Councils of Fort St. George and Bombay, respectively shall be expressed to be made by the Governor in Council, and not otherwise." This reference to the Governor General and Council of Fort William in Bengal is, by virtue of s. 52 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), to be read as referring to the Governor General of India in Council; and s. 39 of the latter Statute vests "the superintendence, direction and control of the whole civil and military Government" in a "governor general and counsellors, to be styled 'The Governor General of India in Council'". But the phrase "the Government of India" is now used almost as frequently, and statutory recognition has been given to it by s. 3 (22) of the General Clauses Act, 1897 (X of 1897).

Every order issued over the signature of a Secretary, Joint Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India, must be presumed to be that of the Governor General in Council, although in practice pressure of time and business renders it necessary that certain matters should be disposed of by the Secretaries themselves, and others by Members of Council without reference to the Governor General or the Council at large. See *Legislative Department's U.O. No. 898 of 1901*.

By the Secretaries to Government Act, 1834 (II of 1834), it is enacted that "each of the Secretaries to the Government of India and to the Government of Fort William in Bengal shall be competent to perform all the duties and to exercise all the powers, which by any Act of Parliament or any Regulation now in force are assigned to the Chief Secretary to the Government of Fort William in Bengal; and each of the Secretaries to the Governments of Fort St. George and Bombay, respectively, shall be competent to perform all the duties and to

exercise all the powers, which, by any Act of Parliament or any Regulation now in force, are assigned to the Chief Secretaries to the Government of Fort St. George and Bombay, respectively." See, for example, s. 39 of the East India Company Act, 1793 (33 Geo. 3, c. 52), and s. 79 of the East India Company Act, 1813 (53 Geo. 3, c. 155).

The appointments of Secretaries, Junior Secretaries, and Under Secretaries to the several Governments in India, and all such offices for the time being in existence, except the Secretaries, Junior Secretaries, and Under Secretaries in the Military, Marine and Public Works Departments, are reserved for members of the Civil Service of India by s. 2 of, and the schedule to, the Indian Civil Service Act, 1861 (24 & 25 Vict., c. 54), and cannot be filled otherwise save under special circumstances and subject to the approval of the Secretary of State for India in Council. As to how far the words used cover Deputy Secretaries, etc., see Foreign Department's General A. Pros., January, 1903, Nos 1 2, and the notes thereto; and for discussions as to the scope and construction of the Statute generally, see Legislative Department's U. O. Nos. 452 508, 554, 604 and 650 of 1905.

A Secretary is a Secretary to the Government of India in a particular Department, and is not a Secretary to that Department or to the Member in charge of it. The position assigned to him by rr. 5 and 6 above is thus explained.

See also the notes in Legislative Department's U. O. 903 of 1905. The power of appointing Secretaries to the Government of India is vested by law in the Governor General, and the Governor General alone (21 & 22 Vict., c. 106, s. 30), and with the one exception introduced by s. 4 of the Indian Civil Service Act, 1861 (24 & 25 Vict., c. 54), an appointment made by the Governor General does not in law require the sanction, nor is it subject to the approval, of the Secretary of State—Legislative Department's U. O. No. 87 of 1909.

### *Part III.—Consulting the Finance Department.*

Proposals  
affecting the  
Budget and  
finances.

13. (1) No proposal involving an abandonment of revenue for which credit has been taken in the Budget, or involving expenditure which has not been provided for in the Budget, or which, though provided for, has not been specifically sanctioned, shall be brought forward for the consideration of the Governor General in Council, nor shall any orders giving effect to such a proposal issue, without a previous reference to the Finance Department.

(2) This rule shall be subject to the following exceptions, namely :—

(a) In cases which, in the opinion of the Governor General, require great secrecy or despatch, it shall not be necessary for any Department to make a previous reference to the Finance Department before issuing orders; but every order so issued shall have the sanction in writing of the Governor General and be communicated to the Finance Department without delay.

(b) The Army Department may, without making a previous reference to the Finance Department,

issue orders sanctioning any expenditure which—

- (i) does not require the sanction of the Secretary of State in Council ;
  - (ii) does not involve any outlay in excess of the total sanctioned budget provision, under any major head of account ; and
  - (iii) does not involve re-appropriations from any one or more grants or minor heads of account to any other such grants or minor heads exceeding in the aggregate three lakhs of rupees in any one financial year.
- (c) The Department of Commerce and Industry may, without making a previous reference to the Finance Department, issue orders, in the case of the Postal and Telegraph Departments, sanctioning any expenditure which—
- (i) does not require the sanction of the Secretary of State in Council ;
  - (ii) does not involve outlay in excess of the budget grant concerned or a re-appropriation from one major head to another.

The Postal and Telegraph Departments have now been combined into one Department.

- (d) The Public Works Department may, without making a previous reference to the Finance Department, issue orders sanctioning any expenditure on (1) Civil Works, and (2) the maintenance and working expenses of Irrigation Works, which—
- (i) does not require the sanction of the Secretary of State in Council ;
  - (ii) does not involve outlay in excess of the budget grant concerned or a re-appropriation from one major head to another.
- (e) The Railway Department may, without making a previous reference to the Finance Department, issue orders, in the case of the maintenance and working expenses of Railways, sanctioning any expenditure which—
- (i) does not require the sanction of the Secretary of State in Council ;
  - (ii) does not involve outlay in excess of the budget grant concerned.

(3) Nothing in clauses (b), (c), (d) and (e) of sub-section (2) shall be deemed to authorize the contravention of any rule or order of the Finance Department for the time being in force, or the introduction of any new principle or practice likely to lead to increase of expense.

References to be made in certain cases.

14. (1) Proposals and questions affecting the pay and allowances of any officer on any Secretariat Establishment of the Government of India, or the application of financial rules to any such officer, or respecting any expenditure by any such Secretariat, shall be referred to the Finance Department by official correspondence, and not by unofficial reference.

(2) In every such case, the referring Department shall, for the purposes of rule 11, sub-section (2), be deemed to be the Department to which the subject belongs.

Proposals affecting subjects belonging to the Finance Department.

15. Unless the Governor General otherwise directs, no proposal affecting any subject which belongs to the Finance Department shall be brought before a Meeting of Council or be circulated to the Members, unless it has originated in, or has been referred to and considered by, that Department.

#### *Part IV.—Consulting the Legislative Department.*

Legislative Department to be consulted as to drafts of statutory rules.

16. Where it is proposed in an Executive Department to make or to sanction any rules in the exercise of a statutory power conferred on the Governor General in Council, the draft of the rules shall, before orders making or sanctioning the same are issued, be referred to the Legislative Department for consideration.

In connection with this rule, see Home Department's letter to Local Governments, No. 1—137-147, dated the 24th January, 1877, and No. 12—980-989, dated the 13th July, 1882. Under these orders all statutory rules requiring the previous sanction of the Governor General in Council should, before submission by a Local Government for such sanction, be referred to the local Legal Remembrancer, Government Advocate or other competent legal adviser, for advice as to their legality, form, wording and arrangement; and, when they are submitted, it should be distinctly stated that they have been settled after such consultation.

Rules made "subject to the control of the Governor General in Council" are usually sent to the Legislative Department for examination before issue. But such cases certainly do not fall under this rule, and it is doubtful whether they can properly be brought under r. 17 (d) below. In practice, however, the Legislative Department deals with them, but in doing so, it confines itself to a cursory examination, avoids the details of drafting, and passes what is proposed as it stands, unless there appears to be in it anything actually *ultra vires* or otherwise illegal. See Legislative Department's U. O. Nos. 740 of 1898 and 100 of 1900.

As to the functions of the Legislative Department in connection with legislation, see rr. 23—36 below, and, in particular, the note to r. 23.

17. The Executive Departments may consult the Legislative Department on the following subjects, namely :—

Other cases in which Legislative Department may be consulted.

- (a) the construction of Statutes, Acts and Regulations ;
- (b) questions on any general legal principle arising out of any case ;
- (c) proposed amendments of the law ; and
- (d) notifications to be issued under any enactment :

It was pointed out by the Hon'ble Mr. (Sir H.) Erle Richards that where the advice of the Legislative Department had already been taken on any question, there was, according to practice, no right to consult the Law officers on the question ; the objection was waived, but it was pointed out that the case should not be treated as a precedent to justify any future departure from practice.—See Legislative Department's U. O. No 73 of 1907. *Contra* Lord Lansdowne's ruling dated the 28th June 1893 in which however Sir A. Miller refused to acquiesce, Legislative Department's U. O. No. 72 of 1893 and the cases included therein :

Provided that the Legislative Department shall not be asked to advise on—

- (e) cases which are connected with legal proceedings commenced or impending, or which are likely to involve any claim against the Government, or questions connected with the practice and procedure of the Courts ;
- (f) cases on which the Advocate-General of Bengal has advised ; or
- (g) cases in which any Advocate-General or any Government Advocate could advise in the ordinary course of his duties and as to which there is no special reason for referring to the Legislative Department.

As to clause (c), see the Office Memoranda quoted in the notes to r. 28, *post*.

With reference to clause (d), Local Governments have been directed to submit with draft notifications proposed under s. 3 of the Scheduled Districts Act, 1874 (XIV of 1874), specific information on certain points in a prescribed form. See Home Department's letters No. 169 (Judicial), dated the 30th January, 1896, to the Government of Madras, and Nos. 1 (Judicial)—284-290, dated the 21st February, 1896, to the other Local Governments.

The object of the first proviso is to secure that, where there is any chance of litigation, the law officers (who must have charge of the matter if and when it is brought into Court) should be consulted at the earliest possible stage. Therefore, where, as in the case of s 39 of the Income-tax Act, 1886 (II of 1886), resort to the Courts is barred by law, the Legislative Department may, *prima facie*, be consulted. But the very fact that the ordinary tribunals cannot be appealed to sometimes renders it the more desirable that the Government should not, without the advice of the regular law officers, give a decision adverse to an individual or to the public at large. Cases involving claims to exemption or non-liability

under the Act just referred to are instances of this, and had better be regarded as falling under the third proviso. *See* Legislative Department's U. O. No. 762 of 1900.

The Advocate-General is appointed by Warrant under the Royal Sign Manual—*see* s. 29 of the Government of India Act, 1858 (21 & 22 Vict., c. 106). Officiating appointments are, however, in practice made by the Governor General in Council. The words "any Government Advocate" do not cover a Legal Remembrancer in a Province in which there is an Advocate-General—*see* Legislative Department's U. O. No. 883 of 1908.

The rules do not prohibit the Law Member as such from advising on a matter on which the opinion of the Advocate-General has been taken: *see* Legislative Department U. O. No. 78 of 1910.

The Legislative Department should not advise on a question which in substance relates to a particular transaction—*see* Legislative Department's U. O. No. 110 of 1907.

As regards the position of the Legislative Department with reference to the examination of draft notifications, *see* Legislative Department's U. O. No. 121 of 1909.

Statement of  
case.

18. Where an Executive Department consults the Legislative Department under rule 17, it shall, except in regard to notifications to be issued under enactments, state, with as much precision as possible, the facts of the case and the point or points on which the advice of the Legislative Department is desired.

*Cf.* as to interdepartmental references generally, r. 18 of the *Secretariat Instructions*, *post*.

#### *Part V.—Bringing of cases before meetings of Council.*

The Executive Council ordinarily meets once a week (on Friday), but special meetings or meetings on other days are convened as the Governor General thinks fit. The Governor General and one Ordinary Member are sufficient to form a quorum—*see* s. 48 of the Government of India Act, 1833 (3 & 4 Will 4, c. 85). For cases where the Governor General is absent, *see* ss. 6 and 7 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67) and s. 4 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4). As to the circulation of Council cases, *see* rules 21 to 23 of the *Secretariat Instructions*, *post*.

*Adjournment of meetings of Council.*—Section 38 of the East India Company Act, 1793 (33 Geo. 3, c. 52), directs that "the Governor General and Councillors of Fort William (*i.e.*, now the Governor General of India in Council—*see* s. 52 of the Government of India Act, 1833) and the several Governors and Councillors of Fort Saint George and Bombay, shall at their respective Council Boards proceed in the first place to the consideration of such matters or questions as shall be proposed by the Governor General or by the Governors of the said Presidencies respectively, and, as often as any matter or question shall be propounded by any of the said Councillors, it shall be competent to the said Governor General or Governor, respectively, to postpone or adjourn the discussion thereof to a future day, provided that no such adjournment shall exceed forty-eight hours, nor shall the matter or question so proposed be adjourned more than twice without the consent of the Councillor who proposed the same." That section is still unrepealed, but it has not been digested by Sir C. Ilbert on the ground of its having been "superseded by 4. 8 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), giving

power to make rules of procedure" (*Government of India*, p. 284)." There is, however, no provision in the rules for the transaction of *executive* business made under s. 8 such as that in r. 6 of the *Rules of Legislative Business*, post, for adjourning meetings, and, while the need for one has, in practice, never been felt, it would seem that the enactment on the point quoted above is still in force.

19. The Governor General, if he concurs with the Member in charge of the Department to which the subject belongs, will determine whether and when a case shall be brought before a meeting of Council; and also whether the papers shall be further circulated before action is taken upon them, and, if so, whether they shall be circulated to all or only to some of the Members:

Bringing before Council of cases in which Governor General concurs with Member in charge.

Provided that, if it is proposed to legislate in the Council of the Governor General, the papers shall, unless the Governor General otherwise directs, be circulated to all the Members and brought before a meeting of Council:

Provided also, that every proposal for legislation in the Council of the Governor General shall, if any Member so requires, be brought before a meeting of Council with a view to determining whether the Government should deal with it upon united counsels or should leave it an open question.

The importance of the words "shall, *unless the Governor General otherwise directs*, be circulated" in the first proviso should not be overlooked. The direction is absolute and imperative, and, if in any case it is desired to dispense with circulation, or with consideration at a meeting of Council, or with both, an express order of dispensation *must* be obtained from the Governor General. And the Governor General should not be asked to pass such an order save in circumstances of exceptional urgency—see the notes to Pros., September, 1900, Nos. 7—20; Legislative Department's U. O. No. 465 of 1908.

The legislation contemplated by the provisos to this rule is legislation in the Governor General's Legislative Council. Legislation in the Executive Council (*i.e.*, by Regulation under the Statute of 1870) is specially provided for by r. 35 below.

In order to enable the Government of India as a whole to maintain a check upon legislation at each stage, the following Memorandum, dated the 27th March, 1901, has been issued by order of the Governor General in Council:—

"1. At every meeting of the Executive Council, the Governor General shall enquire whether there is any matter connected with legislation which any Hon'ble Member desires to bring before the Executive Council.

"2. Before a Bill is referred to a Select Committee, the Bill, with a précis of any opinions received regarding it, shall be circulated to the Hon'ble Members and brought before a meeting of the Executive Council.

"3. After a Bill has been reported upon by a Select Committee the report of the Select Committee shall be circulated to the Hon'ble Members and brought before a meeting of the Executive Council before it is taken into consideration by the Legislative Council."

With the same object a note of the legislative work in prospect is prepared half-yearly, circulated for the information of the Executive



Council, and, if necessary, brought up at a meeting. See the introductory note to Pt. II of the *Rules of Legislative Business, post*.

The procedure prescribed by paragraph 1 of the Memorandum set forth above has, however, fallen into abeyance, and it is only very occasionally now that Hon'ble Members draw attention to matters connected with legislation at meetings which have not been summoned specially for the purpose of considering such legislation (Unofficial No. 80 of 1910; Mr (Sir John) Macpherson's note of 9th March, 1910).

Bringing  
before  
Council of  
cases in  
which  
Governor  
General does  
not concur  
with Member  
in charge.

20. If in any case the Governor General does not concur with the Member in charge of the Department to which the subject belongs, the papers of the case shall either be circulated to all the Members and then brought before a meeting of Council, or, if the Governor General so directs, be at once brought before a meeting of Council.

See rule 11 (2) above and rule 15 of the *Secretariat Instructions, post*.

Bringing  
before  
Council of  
cases in  
which  
Finance  
Member does  
not concur  
with another  
Member.

21. In the case of a proposal referred to the Finance Department under rule 13, or rule 15, if the Member in charge of that Department does not concur with the Member in charge of the referring Department and the Governor General concurs with the Member in charge of the Finance Department, the papers shall be circulated to the Members or be brought before a meeting of Council at once, as the Governor General shall direct: but no orders shall be issued on the proposal, unless the Governor General otherwise directs, until the instructions of the Secretary of State in Council have been received thereon.

Submission of  
cases at meet-  
ings of  
Council and  
orders  
thereat.

22. When a case is brought before a meeting of Council, the Secretary in the Department to which the subject belongs, and if the case concerns another Department, the Secretary in that Department, if specially required to do so, shall attend and, before the case is taken into consideration, the Secretary in the Department to which the subject belongs, or such other Secretary, shall state briefly the point or points on which a decision is required, and if he thinks fit, or if the notes on the case have not been seen by all the Members, the complete history of the case recapitulating in order the substance of the opinion (if any) given thereon by each Member who has examined it.

(2) The Governor General will then request the Member in charge of the Department to which the subject belongs, to make such observations as he thinks fit on the point or points thus submitted for decision.

(3) When a decision upon the point or points under discussion has been arrived at, the Secretary in the Department to which the subject belongs, shall take down in writing and read out the order proposed, and such order shall, after its terms have been finally approved, be initialled

by the Governor General and placed with the notes of the case.

Subject to the power of the Governor General under 33 Geo 3, c. 52, ss 47 & 48 and 49 and 33 & 34 Vict., c 3, s. 5, to overrule the Executive Council, all questions are decided by the votes of the major part of those present, the Governor General having a second or casting vote in cases where there is an equality of votes. *See* Regulating Act, 1773 (13 Geo. 3, c. 63), s. 8; Charter Act, 1833 (3 & 4 Will 4, c. 85), s. 48. For cases where the Governor General is absent, *see* Regulating Act, 1773, s. 8, Indian Councils Act, 1861, (24 & 25 Vict., c. 67.) ss. 6, 7 and Indian Councils Act, 1909 (9 Edw. 7, c. 4), s. 4. The order is called an "Order in Council."

*Part VI.—Cases involving Legislation in the Council of the Governor General.*<sup>1</sup>

23. Save as otherwise provided by rule 25, the Legislative Department is not, in respect of legislation, an originating or initiating Department, and its proper function is to put into technical shape projects of law of which the policy has been affirmed elsewhere.

Duties and functions of Legislative Department in respect of legislation.

The Legislative Department, however, maintains a register in which any proposal for amending legislation in the Governor General's Council is noted at the instance of the Executive Department concerned, *but not otherwise*. *See* Legislative Department's Unofficial Memorandum No. 328—333, dated the 24th September, 1895.

The functions of the Legislative Department are also advisory—*see* rr. 16—18 above. Moreover, all Acts of Parliament are examined, as soon as copies of them are received, in the Legislative Department, such of them as extend to India are published without delay in the *Gazette of India*, and, under a recent arrangement—*see* Military Department's U. O. No. 168-C., dated the 17th July, 1903, and Legislative Department's Office Order, dated the 18th idem—the attention of the proper Executive Department is drawn to any Statute which appears to concern it or possibly to call for action on its part.

24. (1) Save as aforesaid, every proposal, to initiate legislation in the Council of the Governor General, shall be considered in, and, if necessary, transferred to, the Executive Department to which the subject belongs, and there the

Procedure in cases involving legislation.

<sup>1</sup> *Memorandum by the Legislative Department, No. 2769, dated the 20th September, 1911.*

The following procedure shall be observed in the case of Bills, in supersession of that laid down in the Memorandum, dated the 27th March, 1911:—

"Unless the Governor General by general or special order otherwise directs—

(a) every Bill, with a *précis* of any opinions received regarding it, shall before it is referred to a Select Committee, and

(b) every Report of a Select Committee on a Bill shall, before it is taken into consideration by the Legislative Council,

be circulated to the Hon'ble Members."

necessity for legislation and all points connected therewith, except the technical details of the Bill (if any) to be introduced, shall be discussed and settled.

(2) If the Member in charge is of opinion that legislation is expedient, or that the proposal should be referred to Local Governments for opinion, the case shall be submitted to the Governor General and be dealt with in the same manner as business under Part V.

(3) If legislation is decided upon, the papers shall be sent to the Legislative Department with an Official Memorandum indicating with sufficient precision the lines on which it has been decided to legislate, and requesting the Legislative Department to take steps for the introduction in Council of the requisite Bill.

(4) After the issue of an Official Memorandum as aforesaid, all correspondence regarding the legislation decided upon shall be conducted in the Legislative Department, to which all petitions and communications in respect thereof shall, if necessary, be transferred, copies of all such correspondence being, from time to time, sent by that Department to the Executive Department to which the subject belongs for record.

In connection with sub-rule (2), *see* s. 1 of the orders of the 27th March, 1901, quoted in the notes to r. 19. When a Member has decided that the Secretary of State should be addressed on the subject of proposed legislation,—*see* r. 26 below,—then would seem to be the proper time for the submission of the papers to the Governor General for orders under this sub-rule, read with the first proviso to r. 19. *See* Legislative Department's U. O. No. 772 of 1898 and Unofficial Memorandum No. 218—222, dated the 11th August, 1899. *See* also Legislative Department U. O. No. 80 of 1910.

Such an Official Memorandum as is prescribed by sub-rule (3) should not, except when the Secretary in the Department to which the subject belongs otherwise directs, be issued until it has been referred unofficially to, and accepted as sufficiently precise by, the Legislative Department.

It is often convenient to refer to the Legislative Department unofficially in the first instance, and to ask that Department to prepare a draft on the notes in the case or after personal discussion with the Executive Department concerned. This course is, indeed, becoming more and more usual, because it is most useful, in consulting the Secretary of State as to legislation, to forward a draft of the Bill which it is proposed to introduce. When a draft has been unofficially settled in this manner, the Official Memorandum simply forwards a copy of it and of the explanatory correspondence (if any), and requests that "the necessary steps be taken for the introduction of such a Bill in the Council of the Governor General for making laws and regulations."

But although the Legislative Department, as a matter of fact, frequently undertakes the preparation of draft Bills on unofficial references before legislation is actually decided upon, it should not be asked to prepare a draft Bill until points of substance are settled (Unofficial No. 80 of 1910), and the Department should be previously consulted on the question whether in any particular case this should be done. Where

the proposal for legislation is simple and the form in which it will be given effect to will be simple, the Legislative Department should not prepare a Bill before legislation is actually decided on, whereas in a case of a complicated proposal which might well involve difficulties of drafting and be better considered in Bill form, there would be arguments in favor of a contrary course—See Legislative Department's U. O. Nos. 302 of 1911 and 215 of 1911.

The following rules on the subject of the duties of the Legislative Department regarding the preparation of Bills were formulated by Mr. (Sir John) Macpherson and accepted by the Home Department.

"1. An Office Memorandum asking us to prepare a Bill should never be sent until all the procedure necessary before legislation can be undertaken in the Council of the Governor General has been observed, *i.e.*, until the matter has been dealt with as required by rule 24 read with rule 19 and rule 26 of the Rules of Business.

"2. A proposal for legislation should not be submitted to the Governor General for orders under rule 24 until after an unofficial reference has been made to this Department as to the necessity or expediency from the legal point of view of the proposed legislation.

"3. If in any case it appears to the Executive Department desirable that a draft Bill should be prepared by this Department for circulation to Local Governments, this Department should be consulted unofficially before a request is made for the preparation of the Bill"—Legislative Department's U. O. No 302 of 1911.

25. (1) Nothing in rules 23 and 24 shall apply to measures for the codification of the substantive law<sup>1</sup> or for the consolidation, pure and simple, of existing enactments, or to legislation of a formal character, such as that involved in "Repealing and amending" and "Short Titles" Bills.

Power of Legislative Department to initiate certain legislation.

(2) Any such legislation as aforesaid may be initiated in the Legislative Department, which shall, before publication, transmit a copy of the draft Bill proposed by it, together with the Statement of Objects and Reasons, to the Secretary of State for information, and shall also send a copy to the Executive Department to which the subject belongs, for consideration as an administrative measure.

(3) The Executive Department aforesaid shall forthwith make such inquiries as it thinks fit, informing all Local Governments and others consulted that the matter is urgent, and sending the Legislative Department a copy of every communication received by it on the subject.

(4) The opinion of the Executive Department aforesaid shall, before the expiration of six months from the receipt in it of the draft Bill, be sent to the Legislative Department, and the Legislative Department may, on receiving

<sup>1</sup>A scheme for the codification, by the Legislative Department, of the substantive law was settled in the course of the correspondence resting with the Government of India's Despatch to the Secretary of State, No. 84 (Legislative), dated the 10th May, 1877, See *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, at page 232—236.

such opinion or on the expiration of the period aforesaid without the receipt of any such opinion, submit the Bill to the Governor General for orders and, if the Governor General so directs, take steps for its introduction in Council.

Proposals for legislation to be ordinarily reported to Secretary of State before introduction of Bills.

26. (1) Save as hereinafter provided by this rule, every proposal for legislation in the Council of the Governor General which the Government of India desires to initiate, shall be reported to the Secretary of State, and the necessary Bill shall not be introduced until the Secretary of State has had an opportunity of communicating with the Government of India on this subject.

(2) The following shall be excepted from the operation of this rule, namely :—

- (a) consolidation Bills pure and simple ;
- (b) cases in which the legislation proposed is, in the opinion of the Government of India, of a purely formal or unimportant character ; and
- (c) cases in which the legislation proposed cannot, in the opinion of the Government of India, be, without serious evil, delayed in order to admit of a prior report to the Secretary of State.

In connection with sub-rule (1), *see* the notes to r. 24 (2) above. As a matter of language, this sub-rule authorises introduction after a reasonable interval has elapsed, whether the measure is merely reported to the Secretary of State or submitted expressly for his approval. But in cases of the latter kind, it is usual to await the Secretary of State's reply, and the following would seem to be a good working rule :—

In reporting a Bill to the Secretary of State, it should be made clear whether the measure is submitted for approval, or whether it is merely forwarded for information with the intention of introducing it in Council on or after a certain date, which should, of course, be fixed far enough ahead to admit of a reply, at least by telegram, reaching India first. In the former case, a reply should be awaited : in the latter, the Bill may be introduced as soon as the date indicated has arrived, unless orders to the contrary have in the meantime been received. *See* Legislative Department's U. O. No. 417½ of 1902 ; No. 147 of 1906 ; paragraph 4 of Mr. (Sir John) Macpherson's note dated 3rd July, 1906.

The Secretary of State having sanctioned the universalization of the Rs. 10, and Rs. 50 notes and the taking power to universalize the Rs. 100 note in future, it was held that a Bill taking power for the universalization of all notes could be introduced without further reference to the Secretary of State, who would have an opportunity of taking exception to the general provision when the Bill is reported to him after introduction.—*See* Legislative Department's U. O. No. 409 of 1909.

Rule 23 of the *Rules of Legislative Business post*, empowers the Governor General to order the publication of a Bill before it is mentioned in the Legislative Council at all ; but that power should not be used when a measure has been reported to the India Office under this rule and while it is under the consideration of the Secretary of State.

27. (1) Whenever an Additional Member gives notice, under rule 16 of the rules for the Conduct of Legislative Business in the Council of the Governor General, of his desire to move for leave to introduce a Bill in accordance with the provisions of section 19 of the Indian Councils Act, 1861, the Legislative Department shall forthwith send a copy of the notice, together with a copy of the Bill and Statement of Objects and Reasons (if any), to the Executive Department to which the subject belongs, and the matter shall be dealt with in the same manner as business under Part V.

Additional  
Members'  
Bills.

(2) Whenever an Additional Member introduces a Bill in Council, the Legislative Department shall send a copy of the Bill, together with the Statement of Objects and Reasons, to the Executive Department to which the subject belongs, and such Bill shall be dealt with in the same manner as business under Part V, unless it accompanied the notice referred to in sub-section (1) of this rule and has already been dealt with thereunder.

The utmost expedition is necessary in order to enable the Executive Department concerned to obtain, within the short period of notice (three days) required by r. 16 of the *Rules of Legislative Business*, a decision as to whether the motion is to be opposed by the Government or not.

In connection with Additional Members' Bills, the procedure indicated in the following extract from a note written by the Home Secretary (Mr. J. P. Hewett) on the 18th February, 1896, was approved by the Home Member (the late Sir John Woodburn) and the Governor General (Lord Elgin)—see *Papers relating to a Bill to amend the Indian Registration Act, 1877, and the Indian Evidence Act, 1872*:—

"5 If the Bill were sent, under rule 38, seventhly, of the *Rules of Legislative Business*, to the Secretary in the Executive Department simultaneously with its circulation to Members of Council, and were dealt with urgently like notices regarding questions, there would be seven days at least in which the Executive Department could consider, in communication with the Legislative Department, whether there was any ground upon which objection should be taken by the Executive Government to the proposal to legislate. There would be plenty of time for the Department to examine most Bills in a preliminary manner and advise His Excellency whether such objection should be made. In the event of no *prima facie* objection appearing, it would not be necessary for the matter to be discussed in Executive Council, unless a Member made a requisition for action to be taken under rule 17 (now rule 19) of the *Rules of Executive Business*. In the event of such a requisition being made or of any objection to the legislation being brought forward, it would be possible to ask the Member in charge of the Bill to defer making any motion under rule 19 of the *Rules of Legislative Business* for a time, and, if he declined to do so, for the Government to secure time to consider the Bill in the Executive Council by moving the adjournment of the debate.

"6. I think that this procedure would effectively provide for an examination such as is contemplated in paragraph 5 of His Excellency's note of 28th January, 1896, and that this Department should advise

that this is the only examination required at this stage of a Bill's progress before the Council. I would urge that such examination should be made in the Department, the Secretary being responsible to the Hon'ble Member and His Excellency that it should be promptly and properly carried out, instead of being made by the Hon'ble Member in charge of this Department and the Hon'ble the Legal Member. I think that it would be right that the Executive Department should in every case send the remarks made by it on the Bill to the Legislative Department for submission to the Legal Member before they are put before His Excellency.

"7. In any case in which the requirement of rule 20 of the *Rules of Legislative Business* as to circulation had not been complied with, the Hon'ble Member in charge of the Department to which the Bill might pertain could object in the Legislative Council under the terms of that rule, and could secure to the Executive Department the time requisite for the examination of the Bill."

### *Part VII.—Cases involving Legislation in Local Councils.*

See the *Instructions to Local Governments regarding legislation in Local Councils*, *post*, and the notes thereto.

Legislative  
Department  
to deal with  
communications  
regarding draft  
Bills, etc.

28. (1) Every communication made by a Local Government to the Government of India asking for leave to introduce a Bill, or regarding a Bill which has been introduced in the Local Council, or submitting a law for the assent of the Governor General under section 40 of the Indian Councils Act, 1861, shall be addressed to the Secretary to the Government of India in the Legislative Department, and, if such a communication is received in any other Department, that Department shall at once transfer it to the Legislative Department. 24 & 25 Vict.,  
c. 67.

(2) Nothing in this rule shall be construed to apply to any correspondence or communication regarding a proposal for legislation in a Local Council unless and until the stage is reached at which leave to introduce a Bill is asked for. All correspondence before that stage shall be conducted in, and, if necessary, transferred to, the Executive Department to which the subject belongs.

It follows from sub-rule (1) that orders issued by the Government of India, *suo motu*, regarding Bills which have been introduced in Local Councils should emanate from the Legislative Department. See Legislative Department's B. Proceedings, February, 1899, Nos. 60-62.

Apart from the special instructions issued to Local Governments in connection with this rule, which was then numbered 26, the following further orders have been passed with reference to it :—

*Home Department's Office Memorandum No. 1544—1548, dated the 22nd November, 1901, as amended by Home Department Office Memorandum No. 266—273, dated the 23rd February 1910.*

"It not infrequently happens that a Local Government, in addressing an Executive Department of the Government of India as to the policy of legislation proposed by it, forwards its proposal in the form

of a draft Bill. In such a case, rule 26 of the *Rules of Business* requires the Executive Department, even although it approves of the project practically as submitted, to communicate again with the Local Government and direct it to re-submit the draft to the Legislative Department for report to the Secretary of State and for such statutory sanction as may be necessary. The needless correspondence and delay thus involved may, it is thought, be dispensed with in future, and the undersigned is accordingly directed to say that, when a Local Government submits to an Executive Department of the Government of India a proposal for legislation in the form of a draft Bill, the Executive Department should examine the proposal, and if it is able to accept it, either in its entirety or subject to trifling reservations, should transfer the draft to the Legislative Department, accompanied (if necessary) by an unofficial note expressing its views. The Legislative Department should then deal with the measure as if it had been received in that Department direct from the Local Government in accordance with sub-rules (1) and (2) of rule 26.

"2. The undersigned is also to take the opportunity of suggesting that an Executive Department, when formally transferring to the Legislative Department, under sub-rule (1) of rule 26, a communication which obviously cannot be disposed of without an unofficial reference to the former Department, should send at the same time unofficially a note expressing its own opinion.

*Home Department's Office Memorandum No. 269—273, dated the 17th February, 1902 :—*

"In amplification of paragraph 3 of Home Department Office Memorandum No. 1544-1548, dated the 22nd November, 1901, the undersigned is directed to explain that it is desired that Executive Departments should furnish the Legislative Department with advance copies of all communications received from Local Governments and Administrations which involve legislation whether in the Local Councils or in the Council of the Governor General."

*Legislative Department's Unofficial Memorandum No. 117—122, dated the 23rd March, 1902.*

"With reference to paragraph 3 of the Office Memorandum from the Home Department, No. 1544-1548, dated the 22nd November 1901, as amplified by the Office Memorandum from that Department of the 17th February, 1902, No. 271, the undersigned begs to request that advance copies of all communications received from Local Governments and Administrations which involve legislation may be sent unofficially to this Department."

Although it is not till the stage indicated in sub-rule (3) of r. 30 below is reached that the orders of the Governor General are required expressly by these rules, still an Executive Department would do well to submit the papers to the Governor General for approval before instructing a Local Government to proceed to legislation. See Legislative Department's A. Proceedings, October, 1899, Nos. 26—35, and Unofficial Memorandum Nos. 162—167, dated the 15th June 1899.

29. Where a draft Bill submitted by a Local Government requires the previous sanction of the Governor General under section 43 of the Indian Councils Act, 1861,\* or section 5 of the Indian Councils Act, 1892,\* the Legislative Department

Reference to Executive Departments before previous sanction is given.

\* See ante.



shall refer it for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, before any orders are issued.

This is sub-rule (2) of rule 29 as originally made ; sub-rule (1) which required that all penal clauses in every draft Bill submitted by a Local Government should be referred to the Home Department has been cancelled : see Home Department O. M. Nos. 4897-4907, dated 28th November, 1911—Home Department Pros., Public A., December, 1911, Nos. 67—68.

In important cases, however, penal clauses would still be referred to the Home Department for consideration although they occur in a Bill the subject of which does not belong to that Department. See Legislative Department notes on the Bombay Abkai Act, 1875, (Amendment) Bill. O. D. Nos. 211 and 1216 of 1912.

Procedure in  
case of draft  
Bill reported  
to Secretary  
of State be-  
fore intro-  
duction.

30 (1) When a draft Bill is received from a Local Government, other than the Government of Madras or Bombay, for report to the Secretary of State, the Legislative Department shall forward it forthwith, without any discussion of its merits, with a letter to the Under Secretary of State for India, a copy of which shall be forwarded to the Local Government for information, and shall then refer the Bill for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, and shall also itself examine it, before any orders are issued.

(2) When a draft Bill is reported to the Secretary of State by the Government of Madras or Bombay and a copy of the Local Government's despatch to the Secretary of State is received, the Legislative Department shall keep a record of the date of the despatch, and shall then refer the draft for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, and shall also itself examine it, before any orders are issued.

Draft Bills from the Government of Bengal will presumably be dealt with in the same way as draft Bills from the Government of Madras or Bombay.

(3) As soon as possible and before the expiration of two months from the date of the despatch referred to in sub-section (1) or sub-section (2), as the case may be, the Legislative Department shall submit the papers to the Governor General for orders as to whether any, and (if any) what, communication shall be addressed to the Local Government regarding it. Such communication (if any) shall be issued so as to reach the Local Government before the expiration of the two months aforesaid.

(4) If before the issue of such a communication as aforesaid a despatch on the subject has been received from the

Secretary of State, the contents thereof shall be included in the communication to the Local Government ; if no despatch has been received, the fact shall be stated in the communication to the Local Government, and it shall further be intimated that the subsequent receipt by the Government of India of any orders from the Secretary of State before the expiration of the two months aforesaid will be notified (by telegram, if necessary) to the Local Government.

*Explanation.*—The examination of a draft Bill by the Legislative Department under this and the following rules shall ordinarily be confined to general legal principles (including the consideration of the question whether the measure proposed is within the powers of the local legislature concerned), and shall not be deemed to involve the examination of matters of form or details of drafting.

In connection with sub-rule (3), see the last note to r. 28 above. In submitting a Bill to the Governor General, this sub-rule should be quoted and it should be stated explicitly what orders of the Governor General are required, or to what the Governor General is asked to agree.

Where objection is taken to a Bill as an administrative measure the necessary communication should, if the Legislative Department so desires, be drafted by the Executive Department taking the objection for issue by the Legislative Department.

31. When a Bill has been introduced in a local Council without a prior report to the Secretary of State and is, along with the explanatory communication required of the Local Government in such a case, received by the Government of India, the Legislative Department shall refer the Bill for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, and shall also itself examine it, before submitting the papers to the Governor General for orders as to whether any, and (if any) what, communication shall be addressed to the Local Government regarding it

Procedure in case of draft Bill introduced without prior report to Secretary of State.

In such cases the Local Government concerned need not await any reply from either the Secretary of State or the Government of India before proceeding further with the Bill—see r. 6 of the *Instructions regarding Legislation in Local Councils*, post.

32. When, after a Bill has been introduced in a local Council, an amendment in it is reported for orders, the Legislative Department shall refer it for consideration as an administrative measure to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, and shall also itself examine it, before any orders are issued.

Reference to Executive Departments regarding amendment in Council.

This rule does not require submission to the Governor General. But if any objection is taken, the case must of course, be submitted under r. 10 above.

Reference to Executive Departments before submission of Law for Governor General's assent and transmission to Secretary of State.

33. When a law passed by a local Council is submitted for the assent of the Governor General under section 40 of the Indian Councils Act, 1861,\* the Legislative Department shall refer it to the Executive Department to which the subject belongs, and simultaneously to any other Department concerned, for consideration as an administrative measure, before submitting it to the Governor General for assent and transmitting an authentic copy thereof, if assented to, to the Secretary of State, as required by section 41 of the Statute aforesaid.

24 & 25 Vict., c. 67.

Copies of correspondence to be sent to Secretary of State and Executive Departments concerned.

34. The Legislative Department shall, without delay, transmit copies of all correspondence regarding the Bills of local Councils to the Secretary of State for information, and shall also, from time to time, send copies of the same to the Executive Departments concerned for record.

### *Part VIII.—Making of Regulations.*

Executive Department to deal with proposals for the making of Regulations.

35. (1) Where a Local Government proposes the draft of a Regulation to the Government of India in pursuance of the provisions of the Government of India Act, 1870,\* the correspondence shall be dealt with in, and, if necessary, transferred to the Executive Department to which the subject belongs, and it shall there be dealt with, as far as may be, in the same manner as business under Part V :

33 Vict., c. 3.

Provided that every draft of a Regulation proposed as aforesaid, shall, under the orders of the Governor General, be brought before a meeting of Council.

(2) If the draft is approved at a meeting of Council as aforesaid, a copy of it shall be sent by the Executive Department to the Legislative Department with an Official Memorandum stating that it has been so approved as an administrative measure, and requesting that it be submitted to the Governor General for assent.

(3) The Legislative Department shall thereupon submit the Regulation for the assent of the Governor General, and, if it is assented to, shall give it the proper serial number for the year, cause it to be published in the manner prescribed by law, and transmit an authentic copy to the Secretary of State for information. A copy shall also be sent to the Executive Department concerned for record.

This rule does not provide for circulation to Members of Council; but r. 21 of the *Secretariat Instructions*, *post*, requires Secretaries, save in cases of special urgency, to circulate all Council cases before they are brought before a meeting.

"Theoretically no doubt these Regulations are the works of the Local Governments; practically, their principles are settled by the Government

of India and their form by the Legislative Department. It seems to me therefore, desirable that before they are submitted for final consideration in Council, they should be examined in the Legislative Department, in order to ensure their correctness in form, after the substance has been approved by the Department in charge"—*per* the Hon'ble Mr. Scoble—see Legislative Department's U. O. No. 432 of 1888.

The Regulations are a form of legislation and it is contrary to usage to pass them otherwise than by an order made in Council. See Legislative Department's U. O. Nos. 480 and 707 of 1903.

*Part IX.—Making and Promulgation of Ordinances.*

Proposals regarding Ordinances how to be dealt with.

36. Every proposal for the making and promulgation of an Ordinance under section 23 of the Indian Councils Act, 24 & 25 Vict., 1861,\* shall be dealt with, as far as may be, in the same manner as business under Part VI.

*Part X.—Orders, Notes and Minutes by Governor General and Members.*

Orders and notes of Governor General and Members.

37. Orders and notes by the Governor General and Members shall be initialled only; and no such order or note shall be entered in the Proceedings of the Government of India unless it has first been converted into a Minute.

As to the printing of such notes and the names of the writers, see r. 57 of the *Secretariat Instructions post*.

Recording of Minutes.

38. A Member may record a Minute—

- (a) under the provisions of section 5 of the Government of India Act, 1870; or,
- (b) when, after oral discussion in Council, he desires to express dissent, either in whole or in part, from a despatch to the Secretary of State or from an Order in Council, or from a proposed Despatch or Order; or,
- (c) with the consent of the Governor General, on any other occasion.

Signing of Minutes.

39. Every Minute shall be signed in full by the writer, and placed on record, and, if the Minute is to form an enclosure to a Despatch to the Secretary of State, or to be otherwise transmitted to him, the copy so transmitted shall be similarly signed.

As to the collection and submission to the Governor General of notes and minutes written by His Excellency, see the Private Secretary's Memorandum of the 14th March, 1900, quoted in connection with r. 51 of the *Secretariat Instructions*.

Entering of Minutes in Proceedings.

40. Every Minute shall be entered at length in the Proceedings of the Government of India.

\* See *ante*.

*Part XI.—Observance of, and departure from, Rules.*

Secretaries  
responsible  
for observ-  
ance of rules.

41. (1) The Secretary in each Department shall be responsible for the careful observance therein of these rules.

(2) Where a Secretary considers that there has been any departure from these rules, he shall personally bring the matter to the notice of the Governor General.

Joint and  
Deputy Sec-  
retaries.

42. For the purposes of these rules, the expression "Secretary" shall be deemed to include a Joint Secretary, and, in the case of the Railway Department, the President of the Railway Board, and any of the functions of a Secretary, other than those referred to in rules 5, 6 and 41, may, with the approval of the Governor General or the Member in charge of the Department concerned, as the case may be, be discharged by a Deputy Secretary, or, in the case of the Railway Department, by the Secretary to the Railway Board.

As to Secretaries, *see* the notes to r. 12, *ante*; and as to the position of a Deputy Secretary, *see* Legislative Department's U. O. No. 800 of 1900, where it was doubted whether a warrant under the State Prisoners Regulation, 1818 (III of 1818), could be signed by anyone but a Secretary. *Cf.* also rr. 2 and 3 of the *Secretariat Instructions* below.

Power for  
Governor  
General to  
permit  
departure  
from rules.

43. The Governor General may from time to time, if he thinks fit, permit any departure from these rules.

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## SECRETARIAT INSTRUCTIONS.

Ancillary instructions for the guidance of the Government of India Secretariat in matters of detail were first issued by the Home Department in a comprehensive form on the 19th August, 1898. These were last revised and re-issued in the following form on the 4th September, 1907.

### I.—MATTERS OF SUBSTANCE.

#### *General.*

1. The Secretary in each Department shall be responsible for the careful observance therein of these rules. Responsibility of Secretary.

2. For the purposes of these rules, the expression "Secretary" shall be deemed to include a Joint Secretary, and, in the case of the Railway Department, the President of the Railway Board. Meaning of Secretary.

3. Any of the functions of a Secretary, other than those referred to in rules 1, 20 (4), 36 and 64, may, with the approval of the Governor General or the Member in charge of the Department concerned, as the case may be, be discharged by a Deputy Secretary, or, in the case of the Railway Department, by the Secretary to the Railway Board. Deputy Secretary and Secretary, Railway Board.

4. It shall be the duty of the Secretary in the Department to which the subject belongs to submit every case which he is not by the practice of the Department competent himself to dispose of, in a complete form, ready for orders, to the Governor General or the Member in charge of the Department, as the case may be. Duty of Secretary to see that cases are complete.

*Explanation.*—For the purposes of these rules, the expression "the Department to which the subject belongs" has the same meaning as in the Rules of Business made under section 8 of the Indian Councils Act, 1861.

See r. 1 of the *Rules of Business, ante*.

5. If a case is received in the Department to which the subject belongs in an incomplete form, the Secretary may call for the information necessary to complete it before submission to the Governor General or the Member in charge, as the case may be. Power of Secretary to call for further information.

#### *Noting on Cases.*

In connection with the subject of noting, see, too, rr. 47 to 50, *post*.

6. All notes shall be temperately written and free from personal remarks. If apparent errors in the note of a Member in charge of another Department have to be pointed out, or if the opinions which he has expressed have Notes to be temperately and courteously expressed.

to be criticized, special care must be taken that the observations are couched in respectful language.

Only one  
office note

7. When a case is submitted for orders, it shall not contain more than one note from the office, the Superintendent of the Branch or Section re-writing or modifying the note of the clerk, if he cannot accept it. The office note may be similarly treated by the first officer to whom the case is submitted, if he thinks fit.

Only two  
notes by  
gazetted  
officers.

8. When the case has passed to the gazetted officers, ordinarily not more than two of them (including the Secretary) shall note upon it before passing it on to the Honourable Member. In the case, however, of Departments with several Branches through which a case must necessarily pass, this limit cannot be enforced; but ordinarily only one note shall be recorded in each Branch.

In the Legislative Department it is not unusual, especially when the point raised is one of pure law, to issue a single joint-note or opinion over the signatures of the Deputy Secretary, the Secretary and the Law Member. See Legislative Department's Misc. File Register No. 214 of 1903 and the Honourable Mr. Raleigh's note of 18th July, 1903.

Précis.

9. It shall always be assumed that the paper under consideration will be read by the officer to whom it is submitted. Consequently no paraphrases shall be permitted in the notes. A précis of the contents of a single paper shall be made only when it is of great length and complexity, and neither such a précis nor a précis of the contents or history of a file, shall ordinarily be prepared without the orders of an officer.

Further in-  
structions.

10. In some cases perusal of the paper under consideration will be sufficient, and nothing is required beyond a brief suggestion for action. When a note is required, it should be a statement of the case showing, more or less in detail, according to the importance and stage of the case, the question for consideration, the circumstances leading up to it, the rules and precedents bearing upon it, and suggestions for action. The reproduction in a note of *verbatim* extracts from the letter or despatch under consideration should ordinarily be avoided.

Note con-  
curred in to  
be merely  
signed by  
concurring  
officer.

11. When an officer agrees with the preceding note or recommendation, he shall append his signature and nothing more. Marginal notes, or notes to emphasize special points, may, however, be made.

As to the practice in the Legislative Department, see the note to r. 8 above.

Personal  
discussion in  
each  
Department.

12. To facilitate the rapid passing on of cases, and especially in cases of emergency, full use shall be made of personal communication between officers of the same

Department. The Secretary in each Department should encourage his subordinate officers to bring up cases for advice, discussion or disposal. Formal registration to show the transmission of cases from one officer to another within the same Department is unnecessary.

13. A draft despatch, letter, resolution, notification or telegram, as the case may be, may be prepared at any stage of a case, if it appears that the consideration and disposal of the case would be facilitated by submitting it with a draft. Submission of anticipatory draft.

As to important drafts, see rr. 16 and 17 below.

14. When a case has been referred to and returned from another Department, and a difference of opinion between the Departments is disclosed, personal discussion shall, if possible, be substituted for further noting; and in any circumstances not more than one further note shall be recorded in either Department. Personal discussion between Departments.

As to differences of opinion between Departments, see rr. 11 (2) and 21 of the *Rules of Business, ante*.

15. When a case has been submitted to the Governor General under rule 11 (2) of the *Rules of Business*, and has been decided without a reference to Council, the Secretary in the Department to which the subject belongs shall submit the case when so decided to the Governor General for information. Submission to Governor General of cases of disagreement decided without reference to Council.

*Rule 11 (2) of the Rules of Business, see ante*, provides for the submission to Council of cases regarding which the Departments concerned are not in agreement. In such a case the Governor General may be able to suggest a *modus vivendi*, which, if accepted by the disputants, removes the necessity for a reference to Council.

As to the submission of cases to the Governor General, see the note to r. 40 below.

15-A. When recommendations are submitted to His Excellency the Viceroy for the filling of appointments in the Government of India Secretariat, the principles laid down in the Home Department Office Memorandum No. 1369—74-(Estabts.), dated the 19th September, 1910, must be borne in mind.

*Home Department Office Memorandum, No. 1369—1374 (Estabts.), dated the 9th September, 1910.*—"In paragraph 287 of their report the Royal Commission upon Decentralization observe that it is very desirable that, in recruiting for Government of India Secretariats, care should be taken to avoid any predominance on the part of one province. The tenure of the Government of India Secretariat offices is limited, and, the Commission add, an officer having personal knowledge of one province only, is naturally prone, especially at the outset, to judge cases coming up from other provinces by the ideas and circumstances obtaining in his own. They consider it, therefore, of great importance that the Imperial



Secretariats should be recruited so as to obtain personal knowledge of as many provinces as possible.

2. The Home Department consider that the suggestion by the Commission, which is in fact usually followed in practice, is worthy of adoption as a general principle in manning the superior staff of the Government of India Secretariats, and the undersigned is accordingly directed to commend

Foreign	
Finance	Department
Finance (Military Finance)	

it to the Public Works Department. The Commission recognise  
Revenue and Agriculture  
 Department of Commerce and Industry

that special Departments require special qualifications, but, as they observe, it should be possible to obtain these without material infringement of the principle above-mentioned.

### *Drafting on cases.*

Important  
despatches  
to be submit-  
ted to Gov-  
ernor Gener-  
al.

16. In the case of important despatches, letters or resolutions, concerning any question upon which the Governor General has passed orders, either by approving the suggestions made in the notes or by writing a note of his own, but has not actually suggested the phraseology to be employed, the draft shall invariably be submitted to the Governor General before issue.

A despatch to the Secretary of State, though it may have correspondence annexed, should be self-contained so as to furnish an intelligible statement of the whole case, and departmental orders to this effect have been issued. See also the note to rr. 25 and 61 below.

Drafting of  
certain  
despatches.

17. In the case of despatches which are likely to be published, the draft should, as a rule, be prepared by an officer of the Department to which the subject belongs.

### *References (inter-departmental) and external.*

Point refer-  
red to be  
stated and  
repetition  
avoided.

18. In cases of inter-departmental reference, the Department of origin shall state, with as much precision as possible, the specific point or points in respect to which reference is made; and the Department referred to shall avoid unnecessary repetition in its notes of anything sufficiently stated in the notes of the Department of origin.

*Cf.* r. 18 of the *Rules of Business, ante*, in connection with references to the Legislative Department; and see rr. 6 to 12, 14, 47, 49 and 53 of these Instructions.

Personal  
references  
between  
Members.

19. If a Member desires to refer a case in the Department of which he is in charge, to another Member personally, for formal opinion, he shall obtain the consent of the Governor General before doing so. If the Governor General refers a case to a Member personally it shall, at that stage, be noted on by such Member only and then re-submitted to the Governor General.

20. (1) Notes written in one Department and sent to another shall be treated as confidential. They shall not be referred to any officer outside the Secretariat without the general or the specific consent of the Department to which they belong. Confidential character of notes.

(2) Where a general consent has been given to the reference of notes to an officer outside the Secretariat, such consent shall not be construed except when the reference is one by the Department of Commerce and Industry to the Director General of Commercial Intelligence, or by the Home Department to the Director, Criminal Intelligence, to apply to cases in which the papers are marked "Confidential" and in no instance to cases—

- (a) in which the officer to whom the notes are referred is personally affected, or in which his official conduct is under consideration ; or
- (b) in which the emoluments or allowances of any subordinate of the officer to whom the notes are referred are discussed ; or
- (c) in which the Member in charge of another Department to which the officer consulted is subordinate has expressed an opinion.

(3) Each Department shall be deemed to have given its general consent to the reference of its notes to the officers mentioned below by the Departments indicated in each case.

(a) *By any Department.*

- (i) Director General, Indian Medical Service ;
- (ii) Sanitary Commissioner with the Government of India ;
- (iii) Director General of Commercial Intelligence ;
- (iv) Officer in charge of the Records of the Government of India ;
- (v) Librarian, Imperial Library ;
- (vi) Inspector General of Forests ; and
- (vii) Controller of Patents and Designs.

(b) *By the Home Department.*

- (i) Director of Criminal Intelligence ; and
- (ii) Comptroller and Auditor General.

(c) *By the Foreign Department.*

- (i) Director of Criminal Intelligence ;

to be criticized, special care must be taken that the observations are couched in respectful language.

Only one  
office note

7. When a case is submitted for orders, it shall not contain more than one note from the office, the Superintendent of the Branch or Section re-writing or modifying the note of the clerk, if he cannot accept it. The office note may be similarly treated by the first officer to whom the case is submitted, if he thinks fit.

Only two  
notes by  
gazetted  
officers.

8. When the case has passed to the gazetted officers, ordinarily not more than two of them (including the Secretary) shall note upon it before passing it on to the Honourable Member. In the case, however, of Departments with several Branches through which a case must necessarily pass, this limit cannot be enforced; but ordinarily only one note shall be recorded in each Branch.

In the Legislative Department it is not unusual, especially when the point raised is one of pure law, to issue a single joint-note or opinion over the signatures of the Deputy Secretary, the Secretary and the Law Member. See Legislative Department's Misc. File Register No. 214 of 1903 and the Honourable Mr. Raleigh's note of 18th July, 1903.

Précis.

9. It shall always be assumed that the paper under consideration will be read by the officer to whom it is submitted. Consequently no paraphrases shall be permitted in the notes. A précis of the contents of a single paper shall be made only when it is of great length and complexity, and neither such a précis nor a précis of the contents or history of a file, shall ordinarily be prepared without the orders of an officer.

Further in-  
structions.

10. In some cases perusal of the paper under consideration will be sufficient, and nothing is required beyond a brief suggestion for action. When a note is required, it should be a statement of the case showing, more or less in detail, according to the importance and stage of the case, the question for consideration, the circumstances leading up to it, the rules and precedents bearing upon it, and suggestions for action. The reproduction in a note of *verbatim* extracts from the letter or despatch under consideration should ordinarily be avoided.

Note con-  
curred in to  
be merely  
signed by  
concurring  
officer.

11. When an officer agrees with the preceding note or recommendation, he shall append his signature and nothing more. Marginal notes, or notes to emphasize special points, may, however, be made.

As to the practice in the Legislative Department, see the note to r. 8 above.

Personal  
discussion in  
each  
Department.

12. To facilitate the rapid passing on of cases, and especially in cases of emergency, full use shall be made of personal communication between officers of the same

Department. The Secretary in each Department should encourage his subordinate officers to bring up cases for advice, discussion or disposal. Formal registration to show the transmission of cases from one officer to another within the same Department is unnecessary.

13. A draft despatch, letter, resolution, notification or telegram, as the case may be, may be prepared at any stage of a case, if it appears that the consideration and disposal of the case would be facilitated by submitting it with a draft. Submission of anticipatory draft.

As to important drafts, see rr. 16 and 17 below.

14. When a case has been referred to and returned from another Department, and a difference of opinion between the Departments is disclosed, personal discussion shall, if possible, be substituted for further noting; and in any circumstances not more than one further note shall be recorded in either Department. Personal discussion between Departments.

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### *Drafting on cases.*

Important  
despatches  
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16. In the case of important despatches, letters or resolutions, concerning any question upon which the Governor General has passed orders, either by approving the suggestions made in the notes or by writing a note of his own, but has not actually suggested the phraseology to be employed, the draft shall invariably be submitted to the Governor General before issue.

A despatch to the Secretary of State, though it may have correspondence annexed, should be self-contained so as to furnish an intelligible statement of the whole case, and departmental orders to this effect have been issued. See also the note to rr. 25 and 61 below.

Drafting of  
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Point referred  
to be  
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18. In cases of inter-departmental reference, the Department of origin shall state, with as much precision as possible, the specific point or points in respect to which reference is made ; and the Department referred to shall avoid unnecessary repetition in its notes of anything sufficiently stated in the notes of the Department of origin.

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Personal  
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19. If a Member desires to refer a case in the Department of which he is in charge, to another Member personally, for formal opinion, he shall obtain the consent of the Governor General before doing so. If the Governor General refers a case to a Member personally it shall, at that stage, be noted on by such Member only and then re-submitted to the Governor General.

20. (1) Notes written in one Department and sent to another shall be treated as confidential. They shall not be referred to any officer outside the Secretariat without the general or the specific consent of the Department to which they belong. Confidential character of notes.

(2) Where a general consent has been given to the reference of notes to an officer outside the Secretariat, such consent shall not be construed except when the reference is one by the Department of Commerce and Industry to the Director General of Commercial Intelligence, or by the Home Department to the Director, Criminal Intelligence, to apply to cases in which the papers are marked "Confidential" and in no instance to cases—

- (a) in which the officer to whom the notes are referred is personally affected, or in which his official conduct is under consideration ; or
- (b) in which the emoluments or allowances of any subordinate of the officer to whom the notes are referred are discussed ; or
- (c) in which the Member in charge of another Department to which the officer consulted is subordinate has expressed an opinion.

(3) Each Department shall be deemed to have given its general consent to the reference of its notes to the officers mentioned below by the Departments indicated in each case.

*(a) By any Department.*

- (i) Director General, Indian Medical Service ;
- (ii) Sanitary Commissioner with the Government of India ;
- (iii) Director General of Commercial Intelligence ;
- (iv) Officer in charge of the Records of the Government of India ;
- (v) Librarian, Imperial Library ;
- (vi) Inspector General of Forests ; and
- (vii) Controller of Patents and Designs.

*(b) By the Home Department.*

- (i) Director of Criminal Intelligence ; and
- (ii) Comptroller and Auditor General.

*(c) By the Foreign Department.*

- (i) Director of Criminal Intelligence ;

- (ii) Inspector General, Imperial Service Troops ;
- (iii) Comptroller, India Treasuries ; and
- (iv) Surveyor General of India.

(d) *By the Department of Revenue and Agriculture.*

- (i) Inspector General of Forests ;
- (ii) Surveyor General of India ;
- (iii) Inspector General, Civil Veterinary Department ;
- (iv) Director General of Observatories ; and
- (v) Inspector General of Agriculture in India.

(e) *By the Public Works Department.*

- (i) Consulting Architect to the Government of India ;  
and
- (ii) Electrical Adviser to the Government of India.

(f) *By the Finance Department.*

- (i) Comptroller and Auditor General ; and
- (ii) Comptroller, India Treasuries.

(g) *By the Army Department.*

- (i) Chief of the General Staff ;
- (ii) Adjutant General in India ;
- (iii) Quartermaster General in India ;
- (iv) Principal Medical Officer, His Majesty's Forces in India ;
- (v) Military Secretary to His Excellency the Commander-in-Chief ;
- (vi) Director General of Ordnance in India ;
- (vii) Director General of Military Works ;
- (viii) Director of the Royal Indian Marine ; and
- (ix) Surveyor General of India.

(h) *By the Department of Commerce and Industry.*

- (i) Director General of Telegraphs ;
- (ii) Chief Inspector of Explosives with the Government of India ;
- (iii) Director, Geological Survey of India ;
- (iv) Director General of the Post Office of India ;

- (v) Controller of Printing, Stamps and Stationery ;
- (vi) Inspector General of Excise and Salt ;
- (vii) Commissioner, Northern India Salt Revenue ;
- (viii) Chief Inspector of Mines in India ; and
- (ix) Controller of Patents and Designs.

The offices of Director General of Telegraphs and Director General of the Post Office have been combined into one.

(i) *By the Department of Education.*

Director General of Archæology.

(4) No notes shall be referred to the—

- (i) Advocate General, Bengal,
- (ii) Standing Counsel to the Government of India, or
- (iii) Government Solicitor, Calcutta,

except on the order of an officer not below the rank of Secretary and with the specific consent of each Department the notes of which are being so referred.

(5) Subject to the control of the Department to which he is subordinate, any officer to whom notes may be referred under this rule, may himself make unofficial references to that Department, and the following officers may make such references to any Department, namely :—

- (i) Director General, Indian Medical Service ;
- (ii) Sanitary Commissioner with the Government of India ;
- (iii) Director of Criminal Intelligence ; and
- (iv) Inspector General of Forests.

(6) Branches of Army Head Quarters may make unofficial references to the other Departments of the Government of India (except the Legislative Department) and *vice versa* on all purely departmental questions, in which no orders of the Government of India in the Army Department are required to the same extent as they were at liberty to do prior to the creation of the Army Department. Such references may include formal or routine enquiries in cases in which the orders of the Government of India may be required, but which have not reached the stage of an impending proposition.

*Circulation and discussion in Council.*

21. The Secretary in each Department shall be responsible that, except with the special permission of the Governor General, no case, the subject of which belongs to the Department,

Circulation of Council cases to Members before Meetings.



ment, shall be brought before a meeting of Council without having been previously seen by all the Members.

Order of  
circulation.

22. Council cases shall, in the absence of any special instructions to the contrary in any particular case, be circulated to the Members in the following order :—

(a) Cases belonging to the Civil Departments (other than the Foreign Department) :—

- (i) } the five Members in charge of the Civil
- (ii) } Departments other than the initiating
- (iii) } Department ;
- (iv) }
- (v) }
- (vi) } the Member in charge of the Army Department ;
- (vii) } the Member in charge of the initiating Department ;
- (viii) } the Governor General.

(b) Cases belonging to the Foreign Department :—

- (i) }
- (ii) }
- (iii) } the six Members in charge of the Civil Depart-
- (iv) } ments ;
- (v) }
- (vi) }
- (vii) } the Member in charge of the Army Department ;
- (viii) } the Governor General.

(c) Cases belonging to the Army Department :—

- (i) }
- (ii) }
- (iii) } the six Members in charge of the Civil De-
- (iv) } partments ;
- (v) }
- (vi) }
- (vii) } the Member in charge of the Army Department ;
- (viii) } the Governor General.

Supply of  
papers in  
print.

23. When time permits and the case is of sufficient importance, printed copies of the papers and notes connected therewith shall, prior to the meeting of Council before which the case is to be brought, be distributed by the Secretary to the Governor General and all the Members, and the copies so received shall ordinarily be returned to the Secretary by the Members at the close of the discussion in Council.

Two copies of every notice regarding a case for discussion in Council (with the connected papers) should be supplied for the use of the Governor General, and these must reach the Private Secretary's office on, at latest, the Wednesday preceding the Friday at the meeting on which the case is to be considered. Otherwise the Governor General will not permit the case to be brought before the meeting. See Private Secretary's demi-official letter addressed to Secretaries on the 24th May, 1902.

*Correspondence with the Secretary of State, or the India Office.*

(a) **Telegrams.**

24. (a) Every telegram to the Secretary of State shall, unless it relates only to matters of minor importance or to matters of routine, be submitted to the Governor General before issue. A copy of every telegram to the Secretary of State shall be sent after issue to the Private Secretary.

Telegrams to be submitted to Governor General.

(b) In the case of telegrams to the Secretary of State relating to matters of grave public policy, it shall be the duty of the Secretary in each Department to ask the permission of the Governor General to circulate the draft to all the Members, or, if the urgency of the case does not admit of this, to ask permission of the Governor General to circulate a copy of the telegram immediately after despatch.

(b) **Despatches.**

25. Every despatch to the Secretary of State shall, unless it relates only to matters of minor importance or to matters of routine, be submitted in draft to the Governor General or to the Member in charge of the Department to which the subject belongs, as the case may be, unless the Secretary is, by the practice of the Department, competent himself to order the issue of the draft.

Approval of despatches.

In the despatch from the Secretary of State (Lord Cross), No. 68 (Public), dated the 19th May, 1887, attention was called to the "irregular and inconvenient" practice which then prevailed of issuing despatches signed by only two Members of the Government of India or even by one alone. It was at the same time stated that, if in any special case it was desired to send in advance a copy of a despatch not duly signed, it should be accompanied by an explanatory statement, and the official copy duly signed should not be delayed longer than the next mail. With these views Lord George Hamilton, in his despatch No. 29 (Public), dated the 15th February, 1901, expressed concurrence, and observed that, as the matters dealt with in despatches to the Secretary of State included all questions of material importance, it was desirable that they should bear the signatures of all members of the Government who had taken part in the disposal of them. The matter was considered in Council on the 10th May, 1901, and an order was then passed "that care be taken in the Departments of Government to carry out the instructions of the Secretary of State to the effect that all despatches from the Government of India shall be signed by at least three Members, and important despatches by all those Members who have taken part in the discussions." See Home Department's Public A. Proceedings, May, 1901, Nos. 271-272.

As to the drafting of despatches, see rr. 17 and 18, *ante*.

No despatch from the Secretary of State, or *vice versa*, should be published in the *Gazette of India* without the knowledge and sanction of the Governor General—see Home Department's Official Memorandum No. 1614, dated the 24th July, 1899.

No despatch to the Secretary of State should, save in exceptional circumstances, be made public until the interval necessary for it to reach the India Office has elapsed. Apart from this restriction and the orders above referred to, there appears to be no prohibition against the publication of correspondence with the Secretary of State—*see* Legislative Department's U. O. No. 703 of 1898. But despatches from the Secretary of State and correspondence indicating a difference of opinion between the Government of India and a Local Government should be communicated to a subordinate officer only with the express permission of the former—*see* Home Department's letter Nos. 3191—3200, dated the 23rd September, 1903.

Enclosures  
to des-  
patches.

26. The Secretary in each Department shall be responsible for the correctness of the enclosures to every despatch to the Secretary of State issuing therefrom.

In this connection, *see* too rr. 61 to 63 below.

Circulation  
of des-  
patches for  
signature.

27. Subject to the provisions of rule 28, the circulation for signature of every despatch to the Secretary of State, shall, except in case of urgency, commence, if possible, six days before the departure of the mail, in order that each Member may have leisure to study it and the papers connected therewith. Such papers, if the subject is one of importance or interest and has not been brought before a meeting of Council, shall be circulated along with the despatch.

Early issue  
of des-  
patches.

28. Every despatch to the Secretary of State conveying a decision which has been expressed in an Order in Council, shall issue as soon as possible after the meeting of Council at which the decision was taken. Save in exceptionally heavy cases, such despatches shall issue by the mail next following.

Foreign  
Department  
despatches.

29. Every despatch to or from the Secretary of State issuing from, or received in, the Foreign Department shall be circulated as promptly as possible, first, to the Governor General for signature or perusal, as the case may be, and, then, to all the Members in the most convenient order with regard to their places of residence.

Order of cir-  
culation for  
signature.

30. Every despatch to the Secretary of State issuing from any Department other than the Foreign Department shall be circulated for signature, first to the Member in charge, then to the other Members in the order aforesaid, and finally to the Governor General.

Circulation  
of des-  
patches  
received.

31. Every despatch from the Secretary of State received in any Department other than the Foreign Department shall be circulated as promptly as possible, first, to the Member in charge, then to the Governor General, and finally to the other Members in the order aforesaid.

Lists to Gov-  
ernor Gener-  
al when on  
tour.

32. Whenever the Governor General is on tour, lists of despatches to and from the Secretary of State shall be sent to the Private Secretary, immediately after the departure of the outgoing, and the arrival of the incoming mail, respectively.

33. A copy of every despatch to the Secretary of State respecting intended legislation in the Council of the Governor General shall, when issued by an Executive Department, be forwarded to the Legislative Department for record.

Copies of despatches regarding legislation to be sent to Legislative Department.

As regards the communication of other official papers to the Legislative Department, see Legislative Department's U. O. No. 433 of 1902 and Unofficial Memorandum No. 139—143, dated the 16th June, 1902. Except where such papers contain an opinion of the Advocate-General of Bengal or refer to legislation in a local Council, the Legislative Department prefers to receive nothing but the printed collection.

### (c) Secretaries' Letters.

34. Letters shall be sent by the Secretaries in the Departments to the India Office in place of despatches, in the following classes of cases, subject, however, to the understanding that only purely formal business may be so dealt with :—

Substitution of letters for despatches.

(a) the submission of papers, without comment or expression of the views of the Government of India beyond that contained in the papers themselves, for the information or orders of the Secretary of State ;

(b) purely routine and unimportant matters.

### *Publication of papers.*

35. The Secretary in each Department shall be responsible for the correctness of all papers sent therefrom for publication in the Gazette.

Responsibility for correct publication in Gazette.

The *Gazette of India* was first published in 1863, and it was then provided by the Official Gazettes Act, 1863 (XXXI of 1863), that, "when in any Regulation or Act then in operation, or in any rule having the force of law, it was directed that any order, notification or other matter should be published in the official Gazette of any Presidency or place, such order, notification, or other matter should be deemed to be duly published in accordance with the requirements of the law if it were published either in the Gazette in which it would have appeared but for the passing of that Act, or in the *Gazette of India* under the directions of the Governor General of India in Council." Local official Gazettes are also published by the various Provinces, with the exception of Ajmer-Merwara, and British Baluchistan, notifications for which appear consequently in the *Gazette of India*. The *Coorg District Gazette* and the *Andaman and Nicobar Gazette* are published once a month only : all the other Gazettes are published weekly.

36. No papers, except those which it has been the ordinary practice to publish in the Gazette or which are required by law to be so published shall be published without full consideration and without the approval of the Secretary in the Department to which the subject belongs.

Approval of Secretary.

Sanction of  
Governor  
General.

37. No despatches to or from the Secretary of State shall be sent to the press room or otherwise published without the sanction of the Governor General, unless they are of a purely formal character.

Communica-  
tion to Local  
Governments.

38. Where papers are communicated to Local Governments or to the public, all matter indicating the existence of a difference of opinion in Council shall be removed, unless the consent of the Governor General to its retention is first obtained.

## II.—MATTERS OF ROUTINE.

### *Submission of Cases.*

Boards,  
tapes, etc.

39. (1) All files shall be placed on boards to which shall be attached tapes of the prescribed stout pattern.

(2) When a file attains considerable size or weight, a strap of the prescribed pattern shall be employed.

Submission  
to Governor  
General.

40. When a case is submitted to the Governor General, a despatch sheet of the prescribed pattern, with the title of the Department concerned printed at the top and the subject-matter written very briefly in large legible characters across the sheet, shall be placed on the top of the file between the tape and the flaps of the file board; and sufficient blank sheets for noting shall be attached to the notes.

When a case is submitted to the Governor General under any particular enactment, rule of business or secretariat instruction, the enactment, rule or instruction should be quoted.

Linking of  
cases.

41. The linking of cases shall, as far as possible, be avoided. Such linking may occasionally be necessary, but cases should be consolidated, whenever practicable, into one file by an intelligent selection of papers and arrangement of notes.

Previous  
papers.

42. In submitting cases, only such previous papers shall be placed in the file as are relevant to the question under discussion. The office may put up any papers to which it is thought likely that Officers may wish to refer; but the Secretary shall arrange that, at some stage before any file is sent to the Governor General or to the Member of Council or to another Department, all papers not really required are removed.

Arrangement.

43. (1) The previous papers put up with a case should be chronologically arranged, the latest being at the top, and the earliest at the bottom, of the file.

(2) Lettered or numbered slips may be pinned to previous papers referred to in the notes, the letter or number being quoted in the margin in pencil. But not more than one slip shall be attached to the same collection or volume,

the reference to any particular part being made by quoting the record number in, or page of, the collection or volume.

44. Above the previous papers shall be placed the current correspondence, which should be strung together in chronological order downwards, its pages being numbered serially in pencil or chalk like the pages of a book. Until the paper or papers under consideration are disposed of, such papers shall not be added to the current correspondence but shall be placed loose above it, and marked with slips "Paper under consideration" I, II, etc., as the case may be. Above the paper or papers under consideration shall be placed the notes. Current correspondence.

45. The subject of the first current paper in a file shall be entered in red ink on the form used for the first sheet of the notes: the subject of any subsequent paper (receipt or issue) shall be entered in red ink, not on a separate sheet in that form, but in chronological order in the notes. Indication of subject-matter.

46. Where a paper which has been printed is required for information or reference, a printed copy, and not the original, shall, in the absence of orders to the contrary, be submitted. Printed references.

#### *Noting on cases.*

In connection with the subject of noting *see*, too, rr. 6 to 11, *ante*.

47. Every note shall be legibly written upon paper of foolscap size, with a quarter margin and on one side of the paper only. Paper.

Notes, if of any length, should be divided into paragraphs numbered in consecutive order—see Home Department's Official Memorandum No. 669—674 Public, dated the 15th March 1890.

48. Routine notes, such as requests for previous papers, calls for proofs or drafts, orders to print, etc., shall be written on separate slips, and shall be destroyed without being filed. Routine.

49. In cases referred by one Department to another, the notes written in the Department referred to shall ordinarily commence immediately below the notes recorded in the referring Department. Separation of notes of different Departments.

50. There shall ordinarily be only one set of notes, but occasionally it may not be convenient to run all the notes into one set, and appendices containing notes or information on subsidiary points may be attached. Sequence of notes.

#### *Printing and Recording of cases.*

51. When papers are recorded in proceedings, a Table of Contents shall be added. This, may, however, be omitted. Recorded collection.

in cases which are not recorded in A Proceedings, if there are only one or two papers.

Each recorded collection will thus ordinarily contain, in the order named—

- (a) a Table of Contents, with reference to former and later Proceedings ;
- (b) the notes on the case, with appendices to the notes, should they be found necessary in exceptional cases ; and
- (c) the official Proceedings.

The record numbers of the official correspondence shall be entered in the margin of the notes opposite the statement of the subject of each paper.

Private Secretary's Memorandum, dated the 14th March, 1906, required Secretaries to forward to the Private Secretary to the Viceroy, at the beginning of each month, all A or secret proceedings of their Departments which contain notes or minutes by the Governor General. Notes written in Departments and merely initialled by His Excellency are also required. Copies of notes written by His Excellency and recorded in B proceedings should also be forwarded. The practice has been discontinued during the Viceroyalty of Lord Hardinge.

52. Confidential or secret papers recorded in A Proceedings shall be excluded from the ordinary proceedings volumes. In order to show that this has been done, a page will be inserted in the volume where the papers would otherwise have been found, indicating that they are "confidential" or "secret" proceedings.

Exclusion of  
notes from  
proceedings.

53. Précis and notes shall not be entered in the official proceedings of the Government of India, save by the express direction of the Governor General.

In this connection, see r. 37 of the *Rules of Business*, ante, and r. 57 below, regarding the notes of Members of Council.

Demi-official  
correspon-  
dence.

54. Demi-official communications, when not ordered to be brought on the official record, shall, if preserved at all, be treated as notes and incorporated therewith.

Editing of  
notes.

55. (1) When notes are printed either after the disposal or during the currency of a case, all matter of a routine nature, dates and numbers of unofficial references and the like shall be struck out before the papers are sent to Press.

(2) Before the notes are printed for permanent record, they shall be carefully edited by some official, appointed by the Secretary, of not lower standing than the Superintendent of a Branch or Section, who shall see that everything not of permanent value is omitted.

56. The printing of the different parts of a collection of Proceedings, shall be in the different kinds of type prescribed by the Department of Commerce and Industry.

57. In the printed notes attached to the collections of Proceedings, the name of the Governor General, Member, or Secretariat officer, as the case may be, shall be printed in full at the foot of each note written by him. In the case of a note written by the Governor General or by a Member, the letters after the first letter of the surname shall be enclosed in brackets, so that such notes shall be readily distinguishable from minutes.

As to minutes, see rr. 38—40 of the *Rules of Business, ante*. Every minute is entered at length in the Proceedings.

58. Where a paper which has been printed concerns more than one Department, a sufficient number of copies shall be sent by the Department by which it was printed, to each of the other Departments concerned.

#### *Checks on delay.*

59. Every Department shall maintain lists of—

Arrear listg.

- (a) unanswered communications to or from the Secretary of State;
- (b) unanswered communications to or from Local Governments, other Departments and any other persons.

Such lists shall be submitted periodically for orders to a gazetted officer, on convenient dates to be fixed by each Department.

60. No uniform rule is prescribed as to the form of reminders to Local Governments and to other Departments. Care should, however, be taken that reminders are only issued after a reasonable interval, and discrimination should be exercised in selecting the form to be used in each particular case, with a view to avoiding unnecessary correspondence.

#### *Signing and Despatching.*

61. The enclosures to every despatch to the Secretary of State shall be numbered, and a correct list of them shall be appended; and either the enclosures themselves or the list shall be signed by the Secretary or, under the Secretary's instructions, by an officer not below the rank of Assistant Secretary.

The enclosures shall invariably be sent with the despatch, and no reference shall be made, for such papers, to the



monthly volumes of Proceedings of the Government of India.

Whenever the Secretary of State is addressed on any question of importance upon which Local Governments have been consulted, a copy of their replies should, in the absence of valid reasons to the contrary, accompany the despatch.

To prevent omissions, not only the enclosures but also the enclosures (if any) to enclosures should be enumerated and specified.

Signature of  
Gazette Pub-  
lications.

62. All papers sent for publication in the Gazette shall be signed by the Secretary or, under the Secretary's instructions, by an officer not below the rank of Assistant Secretary.

As to the Gazette, *see* the note to r. 35 *ante*.

Secret  
despatches.

63. Every despatch sent to the Secretary of State under section 28\* of the Government of India Act, 1858, shall be enclosed in double covers, the inner cover being marked "Secret" and addressed to the Secretary of State by name. Such despatches shall be transmitted from the Department to which the subject belongs, even in cases where, if they had not been secret, they would have been transmitted from the Finance Department.

Letters to  
Ambassadors,  
etc.

64. Every letter addressed to an Ambassador or Minister of His Majesty or to a Foreign or Colonial Government shall

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\* The section referred to is as follows :—

"28. Any Despatches to Great Britain which might, if this Act had not been passed, have been addressed to the Secret Committee of the Court of Directors, may be marked 'Secret' by the authorities sending the same, and such despatches shall not be communicated to the Members of the Council, unless the Secretary of State shall so think fit and direct."

Section 20 of the East India Company Act, 1793 (33 Geo. 3, c. 52) took power for the appointment of a Secret Committee of Directors, and section 22 runs thus :—

"When any of the Governments or Presidencies in India shall be of opinion that any of their Despatches to Great Britain concerning the government of the said territories and acquisitions, or the levying of war, or making peace, or negotiations or treaties with any of the Native Princes or States of India, shall be of a nature to require the same to be kept secret, it shall be lawful for the said Governments or Presidencies respectively to address their Despatches requiring such secrecy, under cover, sealed with their seals, unto the said Secret Committee of Directors of the said Company, for the inspection of such Committee, and that immediately upon the arrival of such Despatches so addressed, the said Secret Committee of Directors shall deliver the same or copies thereof to the said Board" (*i.e.*, the Board of Commissioners, for the Affairs of India).

Section 36 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85), subsequently provided for the despatch by the Board of Commissioners for the Affairs of India through the Secret Committee of communications on matters which seemed to the Board to require secrecy.

be signed by the Secretary in the Department to which the subject belongs.

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The following are additional instructions which appear to be still in force and ought not to be overlooked.

USE OF "ORDINARY," "EARLY," "URGENT" AND "IMMEDIATE" LABELS.

In order to secure uniformity and simplification of the methods of indicating urgency or priority in dealing with official papers, the Governor General in Council directs the adoption, in all Departments of the Government of India, of the following system of coloured labels for use on boxes, files and letters:—

2. Ordinary—White.

This will apply only to box-labels, no indication being needed on files or letters.

3. Early—Green (Emerald).

This colour will be used for boxes containing ordinary despatches in circulation and for boxes files and letters requiring priority over ordinary business during the usual office hours.

4. Urgent—Red (Vermilion).

This colour is to be employed for boxes containing despatches for signature and for boxes files and letters requiring the attention without delay of the persons to whom they are addressed, whether at their offices or at their private residences.

5. Immediate—Blue (Sky).

This colour is to be used only in cases of *extraordinary urgency* requiring instant attention—such as petitions for reprieve on the eve of execution, military and political intelligence of an unusually important description, or other occurrences of great emergency.

Boxes and letters so marked must be placed *at once* in the hands of the persons to whom they are addressed, *whether by night or by day*.

6. Labels for marking files will be of stiff paper or thin card-board, 12 inches by 4 inches, with an eyelet in the left-hand top-corner for attachment to the upper series on the file.

The word "Early," "Urgent" or "Immediate," with concise instructions (as indicated above), will be printed upon each label. When the urgency has ceased to exist, the label will be detached.

7. Labels for addressing boxes will be on ordinary paper, as heretofore, of the prescribed colours.

8. In order to call attention to despatches for signature and papers in circulation, the list of names of Hon'ble Members will be printed on a white slip,  $2\frac{1}{2}$  inches in width to be gummed on the coloured ground. The nature of the contents of the box can thus at once be recognised.

9. The colours Green, Red and Blue are to be used for no other purpose in connection with files, boxes and letters, than those indicated above, *viz.*, as definite indications of the three degrees—"Early," "Urgent" and "Immediate." Small labels, of these colours, 3 inches by  $\frac{3}{4}$  inch, will be used on letters.

Instructions in the vernacular will be issued to jemadars, duffries, harkaras and others, making it clear what their duties are in regard to boxes and letters marked with the respective colours.

10. Slips inserted for reference in the pages of a file will be of white or pale pink.

The *Paper under consideration* in a file will invariably be marked by a slip with that heading printed upon it. Other references will be alphabetical.

11. The use of "Early" labels should be restricted to cases meriting priority, and that of "Urgent" labels should be strictly limited. A profuse employment of either will defeat the object in view.

The necessity for using blue ("Immediate") labels will be altogether exceptional.

*See Home Department's Memorandum No. 662—668 (Public), dated the 15th March, 1890.*

#### COMMUNICATION TO LEGISLATIVE DEPARTMENT OF LEGAL OPINIONS RECEIVED IN EXECUTIVE DEPARTMENTS.

Whenever the opinion of the Advocate General\* is taken by any Executive Department, or the opinion of the law officers of the Crown† is received in such Department, a copy of it should be furnished to the Legislative Department for information, and, if the Legislative Department should so desire, a copy of the papers connected with the case should be furnished to the Legislative Department for record. This record should be confidential.

*See Governor General's Circular Memorandum, dated the 30th June 1875 (Finance Department's Pros., June, 1875, No. 22).*

Whenever an opinion of the Advocate-General is sent to the Legislative Department for record, a copy of the papers connected with the opinion should also be supplied.

*See Legislative Department's Office Memorandum Nos. 1103—1108, dated the 30th May, 1889.*

With reference to the Governor General's order of the 30th June, 1875, regarding the supply to the Legislative Department of a copy of the Advocate-General's opinion taken by any Executive Department, or of the opinion of the law officers of the Crown received in such a Department, the Legislative Department will feel much obliged if all opinions of other legal advisers, to the Government in India which may be received either directly or through a Local Government in an Executive Department, are, with connected papers, sent to it unofficially for perusal.

*See Legislative Department's Unofficial Memorandum Nos. 39 44, dated the 13th February, 1899.*

\*This refers to the Advocate-General of Bengal only. As to the Advocates-General of Madras and Bombay—see Legislative Department's Office memorandum of the 13th February, 1899

†By the expression "law officers of the Crown" is apparently meant the law officers in England—see Legislative Department's Unofficial Memorandum No. 39—44, dated the 13th February, 1899.

## OFFICIAL CORRESPONDENCE.

The name as well as the official designation (if any) of the writer should be given at the head of official correspondence—see Home Department's letter Nos. 1288-97, dated the 31st March, 1903. On the other hand, covers, containing official correspondence not of a confidential nature,\* should be addressed to an Officer by his official designation only—see Home Department's letter No. 3552—60, dated the 23rd November, 1903.

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\*As to confidential correspondence—see the rules on the subject issued by the Home Department on the 16th February, 1874.

## RULES FOR THE CONDUCT OF THE LEGISLATIVE BUSINESS OF THE COUNCIL OF THE GOVERNOR GENERAL.

[4th February, 1897.]

The following are the revised rules for the conduct of the legislative business of the Council of the Governor General made, under s. 18 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), \* by the Council of the Governor General assembled for the purpose of making Laws and Regulations at a meeting held on the 4th February, 1897, and assented to by the Governor General (Lord Elgin) on the same day, and published under Notification No. 3, dated the 5th February, 1897, in *Gazette of India*, 1897, Part I, page 57, as amended by the Legislative Council of the Governor General at the meeting held on the 28th January, 1910 with the assent of the Governor General.†

### Part I.—Preliminary.

Supersession  
of former  
rules.

1. These Rules supersede the Rules for the Conduct of Business at the meetings of the Council made on the 11th day of February, 1873, and the 16th day of February, 1883.

Definitions.

2 In these Rules—

“Council” means the Council of the Governor General of India assembled for the purpose of making Laws and Regulations :

24 & 25  
Vict., c.

9 Edw. 7, s. 4.

“President” means the Governor General or (during the time of his visit to any part of India unaccompanied by his Council) the President nominated by the Governor General in Council, under the Indian Councils Act, 1861, section 6 ‡; or, in the absence of both the Governor General and the President so nominated, the Vice-President appointed by the Governor General under s. 4 of the Indian Councils Act, 1909 :

“Member” means a Member of the Council, whether Ordinary, Extraordinary or Additional :

“Secretary” means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary : and

“Local Government” includes a Chief Commissioner.

The definition of “President” was amended by the Legislative Council on 28th January, 1910, so as to bring it into conformity

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\*See ante.

†See Notification No. 12, dated the 28th January, 1910, *Gazette of India*, 1910, Pt. I, p. 123.

‡See ante.

with Regulation XIII of the Regulations made in 1909, under 9 Edw 7, c. 4. As to the position of the Senior Ordinary Member as such, see notes under ss. 7 and 15 of the Indian Councils Act, 1861, *ante*.

As to Secretaries to the Government of India, see the Secretaries to Government Act, 1834 (II of 1834), and rr 12 and 42 of the *Rules of Business*, *ante*.

As to the meaning of the expression "Local Government," cf. s. 3 (29) of the General Clauses Act, 1897 (X of 1897), and see the note to r. 10 of the *Rules of Business*, *ante*.

## *Part II.—Meetings of the Council.*

The Council was convened at Allahabad in April, 1871, and at Agra in November, 1873. With these exceptions it has never, until the recent transfer of the Capital to Delhi, assembled except in Calcutta and at Simla. As to legislation at Simla, see the notes to section 17 of the Indian Councils Act, 1861, *ante*.

The Council may now—see section 10 of the Indian Councils Act, 1861 s 3 of the Government of India Act, 1870, s. 1 of the Indian Councils Act, 1909 and r. 1 of the Regulations\* under the latter Statute—ordinarily number 69 Members in all, namely:—

- (1) the Governor General;
- (2) the Lieutenant-Governor of the Punjab or the Chief Commissioner of Delhi, as the Council assembles in the Punjab or in Delhi;
- (3) the Commander-in-Chief *quâ* Extraordinary Member;
- (4) to (9) the six Ordinary Members of the Executive Council;
- (10) to (26) twenty-seven elected Members;
- (37) to (66) thirty nominated Additional Members of whom not more than twenty-eight may be officials; and
- (67) to (69) three nominated non-official Additional Members to be selected—
  - (i) one from the Indian Commercial Community
  - (ii) one from the Muhammadan Community of the Punjab, and
  - (iii) one from the Landholders in the Punjab.

A note or programme of the legislative work in prospect is prepared in the Legislative Department twice a year—once before the commencement of the cold weather session, and again on the return of the Government to Simla. The former is circulated before the Government leaves Simla, and in each instance circulation is confined to the Members of the Executive Council. The note includes, as far as possible, all suggestions for legislation which have been taken into consideration, as well as legislative proposals to which the Government stands actually committed. See discussion in the Executive Council on the 20th July, 1901—Legislative Department's Miscellaneous File Register No. 236 of 1901.

3. The Council shall ordinarily meet at 11 A.M., and shall not prolong its sitting after 4 P.M., unless the President otherwise directs. Hours of sitting.

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\* See the Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor General Gazette of India, 1912, Part I, pp 1251, *et. seq.*

4. [*Quorum omitted.*]

See s. 15 of the Indian Councils Act, 1861, and s. 1 (2) of the Indian Councils Act, 1909 and Reg. XIII of the Regulations under that Act,

Members'  
places.

5. The Members shall sit in such order as the President may direct.

This rule was substituted by the amendments made in January 1910.

A plan of the Council Chamber is usually prepared with the approval of the President on which the seat allotted to each member is indicated.

Adjourn-  
ments.

6. The President may adjourn, without any discussion or vote, any meeting or business, whether there be a quorum present or not, to any future day, or to any hour of the same day.

The day (if any) to which each meeting is adjourned, is announced by the President before the Council rises. It is the practice, where necessary, to postpone a meeting which has been so fixed to another and more convenient date by means of an informal notice to the Members issued under the orders of the Governor General. And this has been done even in the case of the first meeting of a session convened by a notification in the *Gazette of India* in pursuance of the provisions of s. 17 of the Indian Councils Act, 1861, *ante*. See the notes to Legislative Department's B. Pros., July, 1903, Nos. 46-47.

Points of  
order.

7. The President shall preserve order, and all points of order shall be decided by him.

No discussion on any point of order shall be allowed unless the President shall think fit to take the opinion of the Council thereon. Any Member may, at any time, submit a point of order to the decision of the President.

The President shall have all powers necessary for the purpose of enforcing his decisions.

Members to  
rise when  
speaking.

8. A Member desiring to make any observations on any subject before the Council shall speak from his place, shall rise when he speaks, and shall address the President. At any time, if the President rises, any Member speaking shall resume his seat.

Orders of  
speeches,

9. After the Member who makes a motion has spoken, other Members may speak to it in such order as the President may direct.

After all the Members have had an opportunity of speaking, the Mover may speak once by way of reply, and any other Member may, with the permission of the President, speak once by way of explanation :

Provided that, if the matter be an amendment of a Bill, the Member in charge of the Bill shall be entitled to speak next after the Mover of the amendment.

Rules 7, 8 and 9 were amended in January, 1910.

As to the reporting of speeches, see *post*.

10. When, for the purpose of explanation during discussion, or for any other sufficient reason, any Member has occasion to ask a question of another Member on any measure then under the consideration of the Council, he shall ask the question through the President. Explanations.

11. Any Member may speak at the request and on behalf of another Member who is unable to express himself in English. Members who cannot speak English.

The practice is for the Secretary—*see* the definition in r. 2 above to read the speeches of such Members “on their behalf”

12. On every motion before the Council the question shall be put by the President, and shall be decided by a majority of votes. Voting.

Votes may be taken by voices or by division, and shall be taken by division if any Member so desires.

The President shall determine the method of taking votes by division.

The last two paragraphs were substituted by the amendments made in January, 1910.

There is nothing in these Rules to prevent a question which has been put to the vote and decided being raised again at a subsequent stage of the discussions. *See* notes under rule 30, *below*.

The President has, if necessary, a casting vote—*see* s. 15 of the Indian Councils Act, 1861, *ante*.

13. Any Member may ask for any papers or returns connected with any Bill before the Council. The President shall determine, either at the time or at the meeting of the Council next following, whether the papers or returns asked for can be given. Papers and returns.

14. Communications on matters connected with any Bill before the Council may be addressed, either in the form of a petition to the Governor General in Council, or in a letter to the Secretary, and must in either case be sent to the Secretary. Ordinarily, such communications will not be answered. Communications as to pending Bills.

Except in the case of the High Court at Fort William, such communications shall ordinarily be sent through the Local Government.

The British Indian Association and the European and Anglo-Indian Defence Association have also been excepted. *See* the notes of September, 1892, in the papers relating to Act IV of 1893, and the notes of March, 1893, in those relating to Act I of 1895.

15. The Secretary shall either cause such communications to be printed and send a copy to each Member, or circulate them for the perusal of each Member. Circulation of communications.



*Part III.—Introduction and Publication of Bills.*

The rules contained in Parts III to VI indicate the stages which must ordinarily be passed through before a contentious measure becomes law. These may be thus described categorically :—

(1) Motion, after due notice, for leave to introduce a Bill followed by its formal introduction and publication for criticism. This corresponds with the practice in Parliament up to the first reading

(2) Reference of the Bill, with any opinions received, to a Select Committee. This corresponds with the second reading in Parliament and the motion that a Bill be committed.

(3) Consideration in Council of the Select Committee's Report, and of any further amendments that may be brought forward. This corresponds with the third reading in Parliament.

(4) Motion, as in Parliament, that the Bill, as amended, be passed

(5) Signature of the President to the Bill as passed, and of the Governor General by way of assent, followed by its final publication as an Act.

In the case of a non-contentious project some of these steps may be omitted ; and r. 41, *post* provides for this. There is for instance, often no need for waiting for such a measure to be criticised or for referring it to a Select Committee, and it may be accepted without amendment. Again, it is sometimes necessary to pass an Act without delay and the rules have been suspended so completely as to allow a Bill to pass through the Council and become law at a single sitting. But "no l.w., except one arising out of pressing urgency, should be passed without full opportunity for mature deliberation and discussion, and the intervals of discussion should be such as to allow Members of Council adequate opportunity of reflection and inquiry" *see* para. 17 of the despatch from the Secretary of State (Sir C. Wood, afterwards Lord Hallifax), dated the 9th August, 1861, *post*.

For Private Bill legislation, as known at Westminster, there is no special provision beyond that contained in r. 16 below, most of the matters which are dealt with in that way in the United Kingdom, being made the subject of executive action in India.

Notice of  
motion for  
leave.

16. Any Member desiring to move for leave to introduce a Bill in accordance with the provisions of section 19 of the Indian Councils Act, 1861,\* shall give the Secretary at least three days' previous notice of the title and object of the Bill.

If such motion be carried, a copy of the Bill with a full Statement of Objects and Reasons shall be sent by the Member to the Secretary.

The second paragraph was substituted by the amendments made in January, 1910. Additional Members can no longer claim to have their Bills prepared by the Secretary.

In connection with Additional Members' Bills, *see* r. 27 of the *Rules of Business, ante* ; also r. 38 (7) below.

As to Statements of Objects and Reasons, *see* Macaulay's *Indian Minutes*, No. 1, at pages 4 and 5.

The rule applies to all Members, ordinary or additional, official or non-official. But in practice the rule requiring at least three days'

\**See ante*.

previous notice has to be observed only in the case of Bills proposed by non-official Additional Members.

\* It will be seen that a formal motion for leave to introduce a Bill has to be made, and that this may be done before the measure contemplated by the mover has taken the shape of a Bill and is ready for introduction. This is recognised by r 27 of the *Rules of Business, ante*, but in practice a Bill is always introduced and laid on the table as soon as the motion for leave to introduce it has been granted. It is usual for the introducer to make a full statement regarding the measure which he is bringing before the Council.

17. The Secretary shall then cause the Bill, together with the Statement of Objects and Reasons, to be printed, and shall send a copy to each Member. Printing of Bills.

If any of the Members are unacquainted with English, he shall also, if required, cause the Bill and the Statement of Objects and Reasons to be translated into Hindustani for their use.

18 The Council may, at any time after leave to introduce a Bill has been granted, direct that the Bill be published in such manner as the Council thinks fit. Publication of Bills.

When the motion for leave to introduce a Bill is carried, and the Bill has been formally introduced, the mover usually brings forward the further motion that the Bill be published in certain Gazettes.

19 When a Bill is introduced, or on some subsequent occasion, the Member in charge of it shall make one or more of the following motions :— Introduction of Bills.

- (a) that it be referred to a Select Committee, or
- (b) that it be taken into consideration by the Council either at once or at some future day to be then mentioned, or
- (c) that it be circulated for the purpose of eliciting opinion thereon.

With this rule—and especially in connection with clause (b)—r. 20 following should be read

The practice is—see the note to r. 16 above—to introduce a Bill on the same days as that on which leave for its introduction is granted and to make one of the motions indicated in this rule “on some subsequent occasion.”

Before a Bill is referred to a Select Committee under clause (a), the orders contained in s 2 of the Memorandum of the 27th March, 1901, quoted in the notes to r. 19 of the *Rules of Business, ante*, should be observed.

In moving that a Bill be referred to a Select Committee, the mover does not ordinarily make any observations, he having already explained the measure on its introduction; see the last note to r. 16 above. But the reference of a Bill to a Select Committee corresponds with the second reading in Parliament, and it marks the most important stage when the principle of the measure ought to be discussed and affirmed or rejected, according as the motion is carried or lost. Moreover, in view of the practice referred to in s. 2 of the Memorandum noticed above, the Council as a whole has generally no opportunity for criticising a

measure until it is moved that it be referred to a Select Committee ; and it is on that motion that the Members generally should be prepared with their remarks. In the event of its not being necessary to refer a Bill to a Select Committee at all, the opportunity for discussion will not arise till the motion is made that it be taken into consideration.

It follows that, when the motion that a Bill be referred to a Select Committee has been carried, it is usual to take it for granted that the principle of the measure is accepted, and that the details alone remain to be settled—see speeches by Sir A. E. Miller (Law Member) and Sir G. Evans in Council on the 2nd January, 1896. Thus Sir H. S. Maine (Law Member) said in Council on the 31st March, 1866, “I shall do well to depart from the course usually pursued when the motion is that the Report of the Select Committee be taken into consideration. That course I understand to be to assume that the principle of the Bill was affirmed when it was referred to the Committee, and to confine oneself to explaining and justifying the Committee’s recommendations”

As to clause (c), the motion there contemplated is, as a matter of fact, never made, the reason being that it would, under r. 20, entail an adjournment. It is usual, however, to circulate all Bills on which opinions are desired, immediately after their introduction and without an order under this clause. In this connection the following remarks and instructions issued to all Local Governments and Administrations by Legislative Department’s letter Nos. 547—558, dated 9th March, 1899, should be borne in mind —“It is the practice of some Local Governments to consult large numbers of officers and others and to forward, with little or no comment, all the replies received, irrespectively of whether or not they contain any useful criticism. The result is either that valuable opinions are in danger of being lost in the mass of papers before the Governor General in Council and Select Committees, and may in consequence not receive the attention they deserve ; or that an enormous labour is devolved upon the officers of the Supreme Government in sifting the voluminous material placed before them. Therefore, although a Local Government is, as a general rule, free to consult as many persons as it thinks fit, it appears to the Government of India that more discrimination in this connection might perhaps be exercised, and that none of the opinions elicited should be transmitted unless they either are concurred in or contain matter which is deemed worthy of notice and consideration. In no case, for example, should the reply of an officer be forwarded who states that he has no remarks to offer on the subject of the measure before Council, while, where a person consulted indicates approval in general terms, the Local Government might simply report the fact in its letter without enclosing any copy of the communication to that effect.

Preliminary  
circulation of  
Bills.

20. No such motion shall be made until after a copy of the Bill and a copy of the Statement of Objects and Reasons have been furnished to each Member. Any Member may object to the motion unless such copies have been furnished to him at least seven days previously ; and such objection shall prevail unless the President, in exercise of his power to suspend any of these rules, allows the motion to be made.

Discussion of  
Bills.

21. On the day on which such motion is made, or on any subsequent day to which the discussion is postponed, the principle of the Bill and its general provisions may be discussed.

22. When any motion mentioned in rule 19 is carried, the Bill shall, together with a Statement of its Objects and Reasons, if not already published on a motion under rule 18, be published in English in the *Gazette of India*. Gazetting and publication of Bills.

The Bill and Statement shall also, if publication has not already been directed, be published in such official Gazettes and in such vernacular languages (if any) as the Council in each case decides to be necessary for the purpose of giving notice to the communities affected by the Bill.

For this purpose, the Council shall make an order at the meeting at which such motion is carried, and may from time to time, on the motion of any Member, vary or cancel such order.

23. The Governor General, if he sees fit, may order the publication of a Bill, together with the Statement of Objects and Reasons which accompanies it, in such Gazettes and languages as he thinks necessary, although no motion has been made for leave to introduce the Bill. Further publication by order.

In that case it shall not be necessary to move for leave to introduce the Bill; and, if the Bill be afterwards introduced, it shall not be necessary to publish it again.

It would seem, however, that this rule ought not to be interpreted so as to warrant such prior publication of a measure reported to the India Office under r. 26 of the *Rules of Business*, ante, before the approval, express or tacit, of the Secretary of State has been obtained. See Legislative Department's Register No. 1165 of 1903.

A statement is kept of Bills published by order of the Governor General under this rule—see App. IX, No. 20, Pt. III, *post*.

#### *Part IV. Select Committees.*

24. The Law Member shall be a member of every Select Committee. Composition of Select Committees.

The other members of every Committee shall be named by the Council when the Bill is referred, or at any subsequent meeting.

The Law Member and, in his absence, the Member in charge of the Bill, shall be Chairman of the Committee, and in the case of an equality of votes, the Chairman shall have a second or casting vote.

A Select Committee usually consists of an uneven number of Members varying in accordance with the importance of the Bill referred.

Members of Select Committees are, in accordance with the views expressed in the Executive Council on the 20th July, 1900,—see Legislative Department's Miscellaneous File Register No. 236 of 1902,—invited to submit their amendments in print for consideration before each meeting. This is done in the notice fixing the time of meeting.

In the event of an important amendment being proposed without such notice, it is always open to the Chairman to postpone its consideration.

Reports of  
Select Com-  
mittees.

25. After publication of a Bill in the *Gazette of India*, the Select Committee to which the Bill may have been referred, shall make a report thereon.

Such report shall be made not sooner than three months from the date of the first publication in the *Gazette of India*, unless the Council orders the report to be made sooner.

Reports may be either preliminary or final.

The Select Committee shall in their report state whether or not, in their judgment, the Bill has been so altered as to require republication, whether the publication ordered by these Rules or by the Council has taken place, and the date on which the publication has taken place, or, where publication in more than one Gazette or in more than one language is ordered, the date on which the publication in each such Gazette and each such language has taken place.

If, in the judgment of the Committee, the Bill has been so altered as to require re-publication, the Secretary shall send a copy of the altered Bill to the Secretary of the Department to which it pertains.

When the Committee recommend the republication of a Bill which was originally ordered by these Rules or by the Council to be published in more than one Gazette or in more than one language, they shall, in the absence of anything to the contrary in their report, be taken to recommend that the Bill be republished in every such Gazette and every such language.

If the Committee are of opinion that it is unnecessary to republish the Bill in any such Gazette or in any such language, they shall, in their report, state the grounds of their opinion.

As to the principle when a Bill is referred to a Select Committee, see the notes to r. 19 above.

Where after the reference of a Bill to a Select Committee the Government of India desire to extend its scope, the practice is for the Executive Department to issue a further Official Memorandum to the Legislative Department, such Official Memorandum being made a *Paper to the Bill* and laid before the Committee.

In the case of the Excise Act, 1896 (XII of 1896), the Select Committee prepared a Consolidating Bill and proposed its substitution for the Amending Bill committed to it. See Legislative Department's A Pros., March, 18. 6, Nos. 321-347.

For recent instances of an Amending Bill being converted by the Select Committee into a Consolidating and Amending Bill, see Papers

relating to the Cantonments Act, 1910, and the Whipping Act, 1909; see notes in Legislative Department's Proceedings, August, 1910, Nos. 35-45 at pp. 11-12.

After a Bill has been reported upon by a Select Committee, the report should be circulated to the Members of the Executive Council and brought before a meeting of that Council before it is taken into consideration by the Legislative Council. See the order contained in s. 3 of the Memorandum of the 27th March 1901, quoted in the notes to r. 19 of the *Rules of Business, ante*

For form of Report of Select Committee, see App. IX, No. 16, *post*.

26. The Secretary shall cause every report of a Select Committee to be printed, and shall send a copy of such report to each Member, and shall cause the report with the amended Bill, to be published in the *Gazette of India*. Printing and publication of Reports.

If any Member present is unacquainted with English, the Secretary shall also, if requested, cause the report to be translated into Hindustani for his use.

The word "present" is probably meant to indicate general attendance during the current session of the Council, and not presence at the particular meeting concerned

27. The report of the Select Committee on a Bill shall be presented to the Council by the Member in charge of the Bill, and shall be taken into consideration by the Council as soon as conveniently may be; but any Member may object to its being so taken into consideration when he has not been furnished for a week with a copy of the report; and such objection shall prevail, unless the President, in exercise of his power to suspend any of these Rules, allows the report to be taken into consideration. Presentation of reports.

See the notes to rr. 19 and 25 above. It is not usual, but it is sometimes convenient, to make a statement when presenting the report of a Select Committee; but when such a statement is made, it should be merely explanatory and not of a kind calculated to raise a debate. See the remarks of Sir H. S. Maine (Law Member) quoted in the notes to r. 19 above. Discussion ought to be deferred until the report is taken into consideration.

#### *Part V.—Consideration and Amendment of Bills.*

28. When a Bill is taken into consideration by the Council, any Member may propose an amendment of such Bill. Proposal of amendments.

Amendments must, therefore, be moved after the motion that "the Bill be taken into consideration" is agreed to: and this holds equally where a Member wishes to move without notice. See Proceedings in Council on the 10th March 1899, in connection with the Currency Notes Forgery Bill.

29. If notice of such amendment has not been sent to the Secretary at least three days before the meeting of the Council at which the Bill is to be considered, any Notice of amendments.

Member may object to the moving of the amendment; and such objection shall prevail, unless the President, in exercise of his power to suspend any of these Rules, allows the amendment to be moved.

The Secretary shall, if time permits, cause every notice of amendment to be printed, and send a copy for the information of each Member.

If any Member present is unacquainted with English, the Secretary shall also, if requested, cause every such notice to be translated into Hindustani for his use.

Three days' (not *clear* days') notice is required by this rule: that is to say, the notice must reach the Secretary before 11 A. M. on the third day before the meeting. When a notice is received late, it should be accepted, but it ought not to be included in the list of business without the permission of the President. It is the practice to issue, with such permission, a revised list including the amendment.

Occasionally notice of an amendment to be proposed on behalf of the Government is given informally in Council, the Member concerned intimating that it is intended to move such and such an amendment at such and such a meeting. *See* the proceedings in Council in connection with the Indian Penal Code and Criminal Procedure Code Bills in 1898.

An amendment of an amendment may be moved in the course of discussion, and notice of it is not required.

In connection with the Stamp Bill of 1899, some formal amendments were moved and agreed to on the 20th January 1899; but the Member in charge voluntarily postponed till next meeting the motion that "the Bill, as amended, be passed."

The word "present" in § 3 of this rule refers to general attendance at the current session of the Council, and not to presence at a particular meeting of that session. *Cf.* r. 26, and *see* the note thereto.

Order of  
amendments.

**30.** Amendments shall ordinarily be considered in the order of the clauses to which they respectively relate.

Where an amendment of an amendment is moved in the course of discussion, the second amendment is put first. If it be lost, the original amendment is then put. If it be agreed to, the original amendment, of course, falls to the ground and is not put at all.

Amendments should be put to the Council separately; they may be explained *en bloc*, but should not be so voted upon—*see* Proceedings in Council on the 20th January, 1899, in connection with the Indian Stamp Bill of that year.

There is nothing in these Rules to prevent an amendment which has been rejected being moved again. Thus, after the rejection of an amendment that clause 34 of the Indian Life Assurance Companies Bill as amended by the Select Committee be omitted, the Member in charge of the Bill moved the same amendment himself, and the clause was omitted from the Bill. *See* Proceedings of Council relating to the Indian Life Assurance Companies Act, 1912.

Submission  
of Bills  
clause by  
clause.

**31.** Notwithstanding anything in the foregoing rules, it shall be in the discretion of the President, when a motion that a Bill be taken into consideration has been carried, to submit the Bill or any part of the Bill to the Council

section by section. When this procedure is adopted, the President shall call each section separately, and, when the amendments relating to it have been dealt with, shall put the question "that this section, or (as the case may be) this section as amended, stand part of the Bill."

It is more correct to speak of the "clauses" of a Bill and the "sections" of an Act.

32. Any Member may move that a Bill, which has been amended by the Council or by a Select Committee, be re-published or re-committed, and, if the Council so decide, the President may order the Bill to be republished or re-committed, as the case may be.

33. If no amendment be made when a Bill is taken into consideration by the Council, the Bill may at once be passed.

If any amendment be made, any Member may object to the passing of the Bill at the same meeting; and such objection shall prevail, unless the President, in exercise of his power to suspend any of these rules, allows the Bill to pass.

Where the objection prevails, the Bill shall be brought forward again at a future meeting, and may then be passed with or without further amendment.

In connection with para. 1 of this rule, see the penultimate note to 29 above.

#### *Part VI.—Passing of Bills and Publication of Acts.*

34. When a Bill is passed by the Council, a copy thereof shall be signed by the President, and, when the Governor General has declared his assent thereto, such copy shall be signed by the Governor General, and the Bill shall be published as soon as possible in the official Gazettes, under the signature of the Secretary, as an Act of the Governor General in Council.

Such publication shall be made in the *Gazette of India* in English and in the official Gazettes of the Local Governments in English and in such vernacular languages spoken in the territories subject to such Governments respectively as may be ordered by the Council or directed by the Local Government :

Provided that, when the Act does not apply to the whole of British India, it shall be published only in the *Gazette of India* and in the Gazettes of the Local Governments to whose territories it applies.

For form of recording the passing of a Bill and the assent of the Governor General thereto see App. IX, No. 11, *post*.



Publication in English in the *Gazette of India* and in some or all of the local official Gazettes is obligatory. Subject to the arrangements for translation in the Legislative Department of the Government of India, which will be referred to later on, the question of translation into the vernacular is left to the discretion of the Local Governments concerned, unless the Council issues express orders on the subject.

Local Governments are required to furnish to the Legislative Department annual statements regarding the publication and translation of Acts in the form given in App. IX, No. 19, *post*.

As to the arrangements made for the translation and transliteration of Acts, see Legislative Department's letter No. 1207—12.8, dated the 22nd May, 1896, which runs as follows :—

“ All Acts of the Governor General in Council which apply to the whole of British India or are applicable to more than one Province, are translated into Urdu and transliterated into Hindi by the Legislative Department of the Government of India, copies being supplied to the Superintendent, Government Printing, India, for distribution and sale. Where Acts apply to only one Province, it is ordinarily left to the Local Government concerned to issue such translations as are necessary.

“ 2. In the case of Acts of general application, the translations and transliterations are issued as prepared in the Legislative Department of the Government of India ; but of the other Acts referred to above, of which translations and transliterations may be prepared, proofs are sent to each Local Government for such revision as may be thought necessary in order to bring the language into conformity with local peculiarities of expression, a separate edition for each Province being printed when necessary.

“ 3 In cases in which Urdu translations or Hindi transliterations of Regulations made under the Government of India Act, 1870 (33 Vict., c. 3), are required, the Legislative Department may be asked to have them prepared.”

### *Part VII.—Duties of Secretary.*

List of  
business.

25. At least two days before each meeting of the Council, the Secretary shall send to each Member a list of the business to be brought forward at such meeting.

Subject to the provisions of rule 29, no business shall be entered by the Secretary in a list unless notice thereof has been given to him at least three days before the meeting of the Council to which the lists relate :

Provided that business may be added to the list at any time before a meeting under the special orders of the President.

The practice is to circulate, about a week before each meeting of Council, a rough agenda-list and to invite the suggestions of the Members thereon. In accordance, as far as possible, with such suggestions as are received within a specified time, the list is revised and submitted to the Governor General for approval on the third day preceding the date fixed for the meeting. On the Governor General's orders the final list is then prepared and notified to all the Members attending during the current session.

As to late notices of amendments, see the notes to r. 29 above.

On the day before each meeting a spare set of the relevant papers together with a copy of the list of business, should be sent to each Member who is to make any motion included in the list—see Legislative Department's Office Order, dated the 31st January, 1902.

36. The Secretary shall keep a journal, in which all the Proceedings of the Council shall be fairly entered.

The journal shall be submitted after each meeting to the President for his confirmation and signature, and, when so signed, shall be the record of the proceedings of the Council.

For the form of journal which used to be kept under this rule, see the example reproduced in App. IX, No. 17, *post*. It has been discontinued.

37. The Secretary shall also cause to be prepared a full report of the proceedings of the Council at each of its meetings and publish it in the *Gazette of India* as soon as practicable. He shall send a copy of such report to each Member and also to the Permanent Under-Secretary of State for India. Report of proceedings.

For form of full report, see the example reproduced in App. IX No. 18, *post*.

38. In addition to the other duties specially required by these Rules, it shall be the duty of the Secretary— Other duties of Secretary.

*First*, to draft all Bills originated by the Government of India, the Statements of their Objects and Reasons and the Reports of the Select Committee to which such Bills are referred ;

*Second*, to take charge of the copies of the Bills signed by the Governor General and of all the other records of the Council ;

*Third*, to keep the books of the Council ;

*Fourth*, to keep a list of the business for the time being before the Council ;

*Fifth*, to superintend the printing of all papers printed in pursuance of these Rules ;

*Sixth*, to assist the Council and all Committees in such manner as they may direct ;

*Seventh*, to send to the Secretary of the Department to which the Bill pertains any Bill which an Additional Member has obtained leave to introduce under rule 16\* ;

*Eighth*, to examine all Bills deposited by Additional Members, and report to the President on those which contain clauses trenching on subjects

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\* See *ante*.

coming within section 19 or section 22 of the Indian Councils Act, 1861;†

*Ninth*, to write all letters which the Council or the President, or any Select Committee, or the Law Member directs to be written.

For form of list of pending business, see App. IX, No. 20, *post*. The list is revised and re-issued after each meeting of the Council, copies being supplied to all the Members. A confidential statement showing what Bills have been prepared in the Legislative Department unofficially and are still under consideration has lately been added to the copies supplied to the Members of the Executive Government only.

Translations.

39. It shall be the duty of the Secretary to cause to be translated into Hindustani, Bills, Statements of Objects and Reasons, Reports of Select Committees, and amendments of Bills, to cause papers to be explained to Members unacquainted with English, and otherwise to assist them in such manner as they may require.

Important Bills are always, unless time does not permit, translated into Urdu and transliterated into Hindi by the Legislative Department for circulation.

#### *Part VIII.—Miscellaneous.*

Admission  
of strangers.

40. Strangers may be admitted into the Council Chamber during the sittings of the Council on the order of the President. Application for order of admission is to be made through a Member to the Secretary at least two days before the meeting, and the order, if made, shall be sent to such Member.

It is not the practice to trouble the President for orders on such applications; but the Secretary disposes of them himself, and issues tickets to as many applicants as is possible with due regard to the exigencies of space.

As to the dress of Indian gentlemen attending as visitors, see Legislative Department's Miscellaneous Register No. 345 of 1903.

Withdrawal  
of strangers.

41. The President, on the motion of any Member, may direct at any time during a sitting of the Council that strangers shall withdraw.

Publication  
and sale of  
papers.

42. Any paper relating to any measure before the Council may be published by order of the President.

Copies of papers so published shall be sold at such rate as may be fixed by the Secretary.

Dropped  
Bills.

43. Any Bill respecting which no motion has been made in the Council for two years may, by order of the President, be removed from the list of business.

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† See *ante*.

This rule should be systematically enforced in accordance with the views expressed in the Executive Council on the 20th July, 1900—see Legislative Department's Miscellaneous File Register No. 236 of 1901.

Unless this course be taken, a motion for leave to withdraw a Bill is required. See the Proceedings in Council on the 1st July, 1897, in connection with the Burma Municipal Bill of that year.

44. The President, for sufficient reason, may suspend any of the foregoing rules. Suspension of rules.

In practice the President never acts *suo motu* under this rule: he is always moved to do so when suspension is desired. In this connection, see the Introductory note to Pt. III, *ante*.

In connection with the reporting of speeches, a memorandum to the following effect has usually been issued by the Secretary in the early part of each session in Calcutta; and it is the practice to invite the attention of all the Members to it towards the end of the session before the Budget discussion takes place :—

“ The undersigned is desired to request Hon'ble Members of Council to be so good as to make over to him, or to the official reporter, copies of any speeches delivered by them in the Legislative Council which may have been previously printed or written. Such copies have, on occasions, been delivered to press reporters, and the result has been inconvenience and delay in the preparation of the official reports of the Proceedings. It may be explained that arrangements are made in the Legislative Department to give press reporters printed copies of all speeches as soon after each meeting of Council as possible.

“ 2. The undersigned is also to take this opportunity of intimating that, if at any time an Hon'ble Member should desire to have a proposed speech in print prior to the meeting of Council at which it is to be delivered, a printed copy will be supplied if the speech in manuscript be sent to the Legislative Department a day or so before the meeting. Spare copies for distribution to press reporters can also, if desired, be furnished at the same time; but if copies be given to such reporters, it is requested that the original, that is to say, the copy actually used at the meeting, may be reserved for the use of the official reporter.”

So much of the draft of the official report of each meeting of Council as concerns a speaker at the meeting is sent to him with the following notice printed on a red (or urgent) slip :—

“ The report of the debate goes to press on \_\_\_\_\_ day, at P.M., and this proof is submitted in order that the Hon'ble Member may, if he desires, have an opportunity of correcting it.”

## RULES FOR THE DISCUSSION OF THE ANNUAL FINANCIAL STATEMENT IN THE LEGISLATIVE COUNCIL OF THE GOVERNOR GENERAL.

The following rules were made by the Governor General in Council, with the sanction of the Secretary of State in Council under section 5 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4) on the 15th November, 1909.\*

Government of India's Despatch, Home Department, Public No. 21, dated 1st October 1908, paragraphs 61—65, 73 and 74 and Lord Morley's Despatch, Confidential, Public No. 193, dated 27th November 1908, paragraph 31 and Home Department Resolution, Public No. 4213, dated 15th November, 1909, Gazette of India, 1909, Pt. I, p. 1609, paragraph 20 may be referred to.

### DEFINITIONS.

1. In these rules—

(1) "President" means—

- (a) the Governor General, or
- (b) the President nominated by the Governor General in Council under section 6 of the Indian Councils Act, 1861, or
- (c) the Vice-President appointed by the Governor General under section 4 of the Indian Councils Act, 1909, or
- (d) the Member appointed to preside under rule 27;

Rule 27 is made in exercise of the power conferred by s. 5 (2) of the Indian Councils Act, 1909 (9 Edw. 7, c. 4) *ante*.

As regards the position of the Senior Ordinary Member of Council, see notes under section 15 of the Indian Councils Act, 1861, *ante*.

(2) "Member in charge" means the Member of the Council of the Governor General to whom is allotted the business of the Department of the Government of India to which the subject under discussion belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules;

(3) "Finance Member" means the Member in charge of the Finance Department of the Government of India;

(4) "Secretary" means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary;

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\*See Notification No. 23, dated 15th November, 1909, in Gazette of India Extraordinary, dated the 15th November, 1909, p. 436.

(5) "Financial Statement" means the preliminary financial estimates of the Governor General in Council for the financial year next following; and

(6) "Budget" means the Financial Statement as finally settled by the Governor General in Council.

#### A.—THE FINANCIAL STATEMENT.

##### *General order of discussion.*

2. (1) On such day as may be appointed in this behalf by the Governor General, the Financial Statement with an explanatory memorandum shall be presented to the Council every year by the Finance Member, and a printed copy shall be given to every Member.

(2) No discussion of the Financial Statement shall be permitted on such day.

It will be observed that the explanatory memorandum is not a part of the Financial Statement; see definition of "Financial Statement" in rule 1 (5). See notes under rule 3, below.

3. (1) On such later day as may be appointed in this behalf by the Governor General, the first stage of the discussion of the Financial Statement in Council shall commence.

(2) On this day, after the Finance Member has stated any changes in the figures of the Financial Statement which circumstances may since have rendered necessary and has made any explanations of that Statement which he may think fit, any Member shall be at liberty to move any resolution entered in his name in the list of business relating to any alteration in taxation, any new loan or any additional grant to Local Governments proposed or mentioned in such statement or explanatory memorandum, and the Council shall thereupon proceed to discuss each such resolution in the manner hereinafter prescribed.

For the origin of the division into stages of the discussion see Mr. (Sir W.) Meyer's note of 26th May 1909, paragraph 30, Finance Department, Accounts and Finance, A. Proceedings April 1910, Nos. 185 to 239. The first stage of the discussion usually commences about a week after the presentation of the Financial Statement. See Government of India's Despatch, Home Department, Public No. 21, dated 1st October, 1908, paragraph 63.

It has been pointed out that there is a conflict between rule 3 (2) and rule 6 (e). Under Rule 3 (2) the moving of a resolution is permissible on any alteration in taxation, any new loan or any additional grant to local Governments proposed or mentioned in the Financial statement or explanatory memorandum. An alteration in taxation (e.g., in the salt tax) may have been effected by notification or a new loan floated or an

additional grant to a local Government made in the current year by executive order without any reference to the Legislative Council; any such matter would not appear in the Financial Statement, which is defined as the estimates for the coming year, but it would be mentioned in the explanatory memorandum and would therefore be a proper subject for a resolution under rule 3 (2). The matter would have been clear but for rule 6 (e) which requires that every resolution must be directly relevant to some entry in the Financial Statement. To remove the conflict it has been proposed that the words "or explanatory memorandum's" should be added to rule 6 (e). See Legislative Department's unofficial No. 305 of 1911.

Copies of all resolutions, as soon as they are received, are sent to the Finance Department; the other Executive Departments are supplied with copies of such of the resolutions as relate to subjects which belong to them, respectively.

Rules 5 to 20 and 24 to 28 apply to the discussion of these resolutions.

The ruling of His Excellency the President (Lord Hardinge) that "the communication to the press of questions which have not received the President's sanction is regarded as a serious measure and a breach of privilege"—Legislative Department Proceedings, March, 1911, Nos. 190 and 191, is probably applicable also to the case of a resolution.

4. (1) The second stage of the discussion of the Financial Statement shall commence as soon as may be after all the resolutions which may be moved as aforesaid have been disposed of.

(2) In this stage each head or group of heads specified in the statement contained in the Schedule appended to these rules as being open to discussion, shall be considered separately according to such grouping as the Member in charge may determine.

(3) The consideration of a particular head or group of heads shall be introduced by the Member in charge with such explanations, supplementing the information contained in the Financial Statement, as may appear to him to be necessary.

(4) Any Member shall then be at liberty to move any resolution relating to any question covered by any such head or group of heads which may be entered in his name in the list of business, and the Council shall thereupon proceed to discuss every such resolution in the manner hereinafter prescribed.

For the schedule *see* pages 140—141, *post*, the resolutions must be such as are permissible under rule 5 and must be framed in accordance with rule 6; notice of every resolution must be given as required by rule 7.

As regards the propriety of communicating to the press proposed resolution, *see* last paragraph of notes under rule 3 *ante*.

*Subjects excluded from discussion.*

5. No discussion shall be permitted in regard to any of the following subjects, namely :—

- (a) any subject removed from the cognizance of the Legislative Council of the Governor General by section 22 of the Indian Councils Act, 1861; or
- (b) any matter affecting the relations of His Majesty's Government or of the Governor General in Council with any Foreign State or any Native State in India; or
- (c) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

With reference to rule 5 (a) see note under rule 3 (a) of the *Rules for the discussion of matters of general public interest post.*

The Government of a British Colony is not a Foreign State. See notes under rule 3 of the *Rules for the discussion of matters of General Public Interest, post.*

Rule 5 applies to all discussions whether of any resolution under rule 3 or rule 4 or of the Budget under rule 22; the division of these rules under separate heads however makes the application of this rule to discussions of the Budget under rule 22 somewhat doubtful.

*Resolutions.*

6. No resolution shall be moved which does not comply with the following conditions, namely :—

- (a) it shall be in the form of a specific recommendation addressed to the Governor General in Council;
- (b) it shall be clearly and precisely expressed and shall raise a definite issue;
- (c) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity;
- (d) it shall not challenge the accuracy of the figures of the Financial Statement; and
- (e) it shall be directly relevant to some entry in the Financial Statement.

As regards rule 6 (e) see note under rule 3 above. See also note under rule 13 below.

7. A Member, who wishes to move a resolution, shall give notice in writing to the Secretary at least two clear days before the commencement of the stage of the discussion to which the resolution relates, and shall together



with the notice submit a copy of the resolution which the wishes to move.

8. The President may disallow any resolution or part of a resolution without giving any reason therefor other than that in his opinion it cannot be moved consistently with the public interests or that it should be moved in the Legislative Council of a Local Government.

A proposed resolution not complying with the provisions of rule 3 (2) or 4 (2) as the case may be, and of rules 5 and 6 is out of order and there is inherent power to disallow it. See Mr. Macpherson's note, dated 30th September, 1911, in Legislative Department's Official Diary No. 2275. It will be observed that there is no express provision for the amendment of resolutions under these rules; the omission which was deliberately made is due no doubt to the fact that owing to the shortness of the notice on which these resolutions have to be dealt with it would not be practicable to have them amended.

9. (1) No discussion in Council shall be permitted in respect of any order of the President under rule 8.

(2) A resolution that has been disallowed shall not be entered in the proceedings of the Council.

10. Resolutions admitted by the President shall be entered in the list of business in such order as he may direct.

### *Discussion of Resolutions.*

11. (1) After the mover of a resolution has spoken, other Members may speak to the motion in such order as the President may direct, and thereafter the mover may speak once by way of reply.

(2) No Member other than the mover and the Member in charge shall speak more than once to any motion except with the permission of the President for the purpose of making an explanation.

The intention of this rule is that, subject to the right of the President under rule 15 to address the Council before putting a question to the vote, the mover should have the last word except where the closure is applied under rule 15 in which case the Member in charge is entitled to have the last word. Legislative Department's un-official No. 490 of 1911.

12. No speech, except with the permission of the President, shall exceed fifteen minutes in duration;

Provided that the mover of a resolution, when moving the same, and the Member in charge may speak for thirty minutes.

13. The discussion of a resolution shall be limited to the subject of the resolution, and shall not extend to any matter as to which a resolution may not be moved.

The intention and effect of this rule read with rule 6 (e) is to restrict the discussion to genuine financial questions and not to permit resolutions to be moved under these rules for the purpose of airing general grievances; but no rigid line can be drawn between a *bona fide* discussion of a question directly relevant to some entry in the financial statement and a discussion of matters of any other character and in every case the decision must be left to the discretion of the President. See Legislative Department's un-official No. 49v of 1911.

14. A Member who has moved a resolution may withdraw the same unless some Member desires that it be put to the vote.

15. When, in the opinion of the President, a resolution has been sufficiently discussed, he may close the discussion by calling upon the mover to reply and the Member in charge to submit any final observations which he may wish to make :

Provided that the President may in all cases address the Council before putting the question to the vote.

See note under rule 11 *above*.

16. If any resolution involves many points, the President at his discretion may divide it, so that each point may be determined separately.

17. (1) Every question shall be resolved in the affirmative or in the negative according to the majority of votes.

(2) Votes may be taken by voices or by division and shall be taken by division if any Member so desires.

(3) The President shall determine the method of taking votes by division.

The President has, if necessary a casting vote, see Indian Council's Act, 1861, s. 15 and Indian Councils Act, 1909, s. 4, *ante*.

18 (1) The President may assign such time as with due regard to the public interest he may consider reasonable for the discussion of resolutions or of any particular resolution.

(2) Every resolution which shall not have been put to the vote within the time so assigned shall be considered to have been withdrawn.

19. Every resolution, if carried, shall have effect only as a recommendation to the Governor General in Council.

20. When a question has been discussed at a meeting of the Council, or when a resolution has been disallowed under rule 8 or withdrawn under rule 14, no resolution raising substantially the same question shall be moved within one year.

## B.—THE BUDGET.

21. (1) On or before the 24th day of March in every year the Budget shall be presented to the Council by the Finance Member, who shall describe the changes that have been made in the figures of the Financial Statement, and shall explain why any resolutions passed in Council have not been accepted.

(2) A printed copy of the Budget shall be given to each Member.

22. (1) The general discussion of the Budget in Council shall take place on such later day as may be appointed by the President for this purpose.

(2) At such discussion, any Member shall be at liberty to offer any observations he may wish to make on the Budget but no Member shall be permitted to move any resolution in regard thereto, nor shall the Budget be submitted to the vote of the Council.

(3) It shall be open to the President, if he think fit, to prescribe a time limit for speeches.

The provisions of rule 5 above apply to the discussion of the Budget. It was ruled by His Excellency the President at the Budget debate of March 1911 that it is out of order to discuss a matter (duty on tobacco and petroleum) on which the vote of the Council has been taken in the course of the year—See Proceedings of the Legislative Council, 1910-1911, at page 644.

23. The Finance Member shall have the right of reply, and the discussion shall be closed by the President making such observations as he may consider necessary.

## C.—GENERAL.

24. (1) Every Member shall speak from his place, shall rise when he speaks and shall address the chair.

(2) At any time, if the President rises, any Member speaking shall immediately resume his seat.

25. (1) Any Member may send his speech in print to the Secretary not less than two clear days before the day fixed for the discussion of a resolution, with as many copies as there are Members, and the Secretary shall cause one of such copies to be supplied to every Member.

(2) Any such speech may, at the discretion of the President, be taken as read.

This rule by its wording is limited to speeches made at discussions of resolutions and is strictly speaking inapplicable to the Budget debate at which no resolution is permitted to be moved. There is however no objection to a Member sending copies of a speech which he proposes

to make at a Budget debate or to the President allowing such a speech to be taken as read. See notes dated 23rd December 1909 in Finance Department Proceedings, Accounts and Finance A., April, 1910, Nos 185 to 239, at page 47 of notes.

26. (1) The President shall preserve order, and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time submit a point of order to the decision of the President.

(4) The President shall have all powers necessary for the purpose of enforcing his decisions.

27. The Governor General may appoint a Member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which the Financial Statement or the Budget or any portion thereof is discussed in the Council.

This rule is made in exercise of the power conferred by section 5 (2) of the Indian Councils Act, 1909 (9 Edw. 7, c. 4) above.

28 The President, for sufficient reason, may suspend any of the foregoing rules.

## THE SCHEDULE.

*Heads open to or excluded from discussion under rule 4.*

REVENUE.		EXPENDITURE.	
Heads open to discussion.	Heads not open to discussion.	Heads open to discussion.	Heads not open to discussion.
I.—Land Revenue . II.—Opium . III.—Salt . V.—Excise . VI.—Provincial Rates IX.—Forest . X.—Registration XII.—Interest XIII.—Post Office . XIV.—Telegraph . XV.—Mint . XVI.—B.—Jails XVII.—Police . XIX.—Education . XX.—Medical XXI.—Scientific and other Minor Departments. XXII.—Receipts in aid of Super- annuation, etc. XXIII.—Stationery and Print- ing.	IV.—Stamps. VII.—Customs. VIII.—Assessed Taxes. XI.—Tributes from Native States. XVI.—A.—Courts.* XX XII.—Army. XX XIII.—Marine. XX X IV.—Military Works. All purely Provincial revenue and revenue accruing from divided heads in Provinces possessing Legislative Councils.	1.—Refunds and drawbacks 3.—Land Revenue 4.—Opium . 5.—Salt . 6.—Stamps . 7.—Excise . 8.—Provincial Rates 9.—Customs . 10.—Assessed Taxes 11.—Forests . 12.—Registration . 14.—Interest on other obligations 15.—Post Office 16.—Telegraphs 17.—Mint 18.—General Administration† 19.—A.—Courts of Law† 19.—B.—Jails . 20.—Police . 22.—Education 24.—Medical .	2.—Assignments and Compen- sations. 13.—Interest on debt. 23.—Ecclesiastical. 25.—Political. 27.—Territorial and Political Pensions. 38.—State Railways‡ 42.—Major Works : Interest on debt. 46.—Army. 46.—A.—Marine. 47.—Military Works. 47.—A.—Special Defences. All statutory charges. All purely Provincial expen- diture and expenditure accru- ing under divided heads in Provinces possessing Legis- lative Councils.

XXIV.—Exchange . . .	28.—Scientific and other Minor Departments.
XXV.—Miscellaneous . . .	28.—Civil Furlough and Absentee Allowances.
XXVI.—State Railways . . .	29.—Superannuation Allowances and Pensions.
XXVIII.—Subsidised Companies.	30.—Stationery and Printing.
XXIX.—Irrigation, Major Works.	31.—Exchange.
XXX.—Minor Works and Navigation.	32.—Miscellaneous.
XXXI.—Civil Works . . .	33.—Famine Relief.
	34.—Construction of Protective Railways.
	35.—Construction of Protective Irrigation Works.
	36.—Reduction or Avoidance of Debt.
	40.—Subsidised Companies; Land, etc.
	41.—Miscellaneous Railway Expenditure.
	42.—Irrigation; Major Works—Working Expenses.
	43.—Minor Works and Navigation.
	45.—Civil Works.
	48.—State Railways; Capital Expenditure not charged to Revenue.
	49.—Irrigation Works; Capital Expenditure not charged to Revenue.

\* Mainly court fees and fines.

† These heads include certain statutory charges, which will be excluded from debate.

‡ This head deals purely with interest, sinking funds and annuities.

## RULES FOR THE DISCUSSION OF MATTERS OF GENERAL PUBLIC INTEREST IN THE LEGIS- LATIVE COUNCIL OF THE GOVERNOR GENERAL.

The following rules were made by the Governor General in Council with the sanction of the Secretary of State in Council under section 5 of the Indian Councils Act, 1909 (9 Edw. 7, c. 4) on the 15th November, 1909.\*

Government of India's Despatch, Home Department, Public No. 21, dated 1st October, 1908, paragraphs 57, 58 and 59, and Lord Morley's despatch, Confidential, Public No. 193, dated 27th November, 1908, paragraphs 27, 28 and 29 and Home Department Resolution, Public No. 4213, dated 15th November, 1909, Gazette of India, 1909, Part I, page 1609, paragraph 20, may be read.

### *Definitions.*

#### 1. In these rules—

##### (1) "President" means—

- (a) the Governor General, or
- (b) the President nominated by the Governor General in Council under section 6 of the Indian Councils Act, 1861, or
- (c) the Vice-President appointed by the Governor General under section 4 of the Indian Councils Act, 1909, or
- (d) the Member appointed to preside under rule 27 ;

Rule 27 is made in exercise of the power conferred by section 5 (2) of the Indian Councils Act, 1909 (9 Edw. 7, c. 4), *ante*.

As regards the position of the senior Ordinary Member of Council, see notes under section 15 of the Indian Councils Act, 1861, *ante*.

(2) "Member in charge" means the Member of the Council of the Governor General to whom is allotted the business of the Department of the Government of India to which the subject under discussion belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules ; and

(3) "Secretary" means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary.

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\* See Notification No. 24, dated 15th November 1909, in Gazette of India, Extraordinary, dated 15th November, 1909, p. 441.

*Matters open to discussion.*

2. Any matter of general public interest may be discussed in the Council subject to the following conditions and restrictions.

3. No such discussion shall be permitted in regard to any of the following subjects, namely :—

- (a) any subject removed from the cognizance of the Legislative Council of the Governor General by section 22 of the Indian Councils Act, 1861; or
- (b) any matter affecting the relations of His Majesty's Government or of the Governor General in Council with any Foreign State or any Native State in India; or
- (c) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

It has been proposed to add the words "or by section 5 or section 6 of the Indian Councils Act, 1909" to clause (a) of rule 3. The mere fact that a subject is one on which, by reason of section 22 of the Indian Councils Act, 1861, the Legislative Council cannot legislate does not bring the subject within the scope of rule 3 (a) which has been held to refer only to cases where there is a proposal necessitating legislation to give it effect. Where, therefore, no legislation need be undertaken if the resolution is adopted by the Council, owing to the fact that the legislation necessary to give effect to the resolution has already been undertaken, rule 3 (a) would not bar discussion of the resolution by reason of the fact that if legislation had been necessary, it would not have been within the cognizance of the Council to undertake it—Legislative Department's Proceedings, February, 1911, Nos. 49—56; see also Legislative Department Proceedings, February, 1911, Nos. 1—5. A proposal which has for its object the laying down of a particular procedure (*e.g.*, previous consultation with Legislative Council, or previous publication of schemes to that Council) to be followed by the Government in any branch of the administration involves the partial suspension, at least for a time, of the executive authority of Government and as such affects section 39 of the Government of India Act, 1833, which vests the "superintendence, direction and control" in the Government of India and therefore falls within the terms of rule 3 (a) Legislative Department Proceedings, March 1912, Nos. 10—108.

The Government of a British Colony is not a Foreign State. See Legislative Department's B Proceedings, March, 1910, Nos. 144 to 148.

*Resolutions.*

4. Subject to the restrictions contained in rule 3, any Member may move a resolution relating to a matter of general public interest:



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OF PUBLIC INTEREST.

Provided that no resolution shall be moved which does not comply with the following conditions, namely :—

- (a) it shall be in the form of a specific recommendation addressed to the Governor General in Council ;
- (b) it shall be clearly and precisely expressed and shall raise a definite issue ; and
- (c) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity.

The recommendation must be one which the Governor General in Council may give effect to. See the Law Member's note in file Register No. 187 of 1911 at page 4.

5. A Member, who wishes to move a resolution, shall give notice in writing to the Secretary, at least fifteen clear days before the meeting of the Council at which he desires. move the same, and shall together with the notice submit a copy of the resolution which he wishes to move :

Provided that the President may allow a resolution to be moved with shorter notice than fifteen days, and may, in any case, require longer notice or may extend the time for moving the resolution.

An adjourned meeting is a separate meeting within the meaning of this rule. Thus a notice which is short by just one day for a meeting would be in time for the meeting held on the next following day if the meeting happens to be adjourned by reason of the business on the list not having been finished. A fresh list of business including the resolution may be issued for the adjourned meeting. See file Register No. 188 of 1911.

As soon as notice of a resolution is received, a copy of the resolution with the notice is communicated confidentially to the Members of the Executive Council and the Private Secretary to the Viceroy : for form of circular, see Appendix IX.

6. (1) The Secretary shall submit every resolution of which notice has been given to him in accordance with rule 5 to the President, who may either admit it or, when any resolution is not framed in accordance with rule 4, cause it to be returned to the Member concerned for the purpose of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, resubmit the resolution duly amended, the resolution shall be deemed to have been withdrawn.

Every resolution of which notice has been given to the Secretary, whether in due time or not, is submitted to the President who has power under the proviso to rule 5 to admit a resolution although the notice is shorter than what is required by the rule.

Where a proposed resolution does not comply with some provision of rule 4 and the defect can be removed by amendment, the usual practice is for the Secretary to communicate with the member suggesting necessary amendments and asking him whether he accepts the amendments.

Every resolution with the Legislative Department's remarks thereon is sent for consideration as an executive measure to the Department to which the subject matter of the resolution belongs and after return from that Department is submitted to His Excellency the President for orders. In important cases the executive Department concerned submits the resolution to the Governor General under the Rules of Business and the matter may then, under the Governor General's order, be brought up before and considered in Council before the file is returned to the Legislative Department; in such cases if the order on the file, may be read as including an order by His Excellency either admitting or disallowing the resolution it is considered unnecessary to submit it again to His Excellency under this rule: See Legislative Department Proceedings March, 1912, Nos. 1—4, and 5—11.

The two alternatives of admitting the resolution and returning it, for amendment which are mentioned in rule 6 (1) are evidently not meant to be exhaustive. The obvious intention of rules 3 and 4 is that the President has power to disallow a resolution which offends against either of those rules. See Legislative Department's Proceedings, March, 1912, Nos. 104—108, for cases of resolutions disallowed under rule 3 (a); see also notes under rule 7 of *Question Rules*, below.

When the President has given his ruling on a resolution, no application for reconsideration of the ruling will be entertained. See the orders of His Excellency the President on Mr. Mudholkar's memorial for the reconsideration of an order disallowing a resolution. Legislative Department B. Proceedings, March, 1912, nos. 3 and 4.

7. The President may disallow any resolution or part of a resolution without giving any reason therefor other than that in his opinion it cannot be moved consistently with the public interests or that it should be moved in the Legislative Council of a Local Government.

8. (1) No discussion in Council shall be permitted in respect of any order of the President under rule 6 or rule 7.

(2) A resolution which has been disallowed shall not be entered in the proceedings of the Council.

9. Resolutions admitted by the President shall be entered in the list of business for the day in the order in which they are received by the Secretary :

Provided that the President may give priority to any resolution which he may consider to be of urgent public interest, or postpone the moving of any resolution.

As soon as a resolution is admitted circulars are issued to all Additional Members of the Council informing them of the exact terms of the resolution as admitted and the meeting at which it will probably be discussed. The following form of circular is used :

GOVERNMENT OF INDIA.  
LEGISLATIVE DEPARTMENT.

Circular Memorandum.

No. .

To

ALL ADDITIONAL MEMBERS OF COUNCIL.

Hon'ble Members are informed that the following Resolution which has been admitted by His Excellency the President, will be entered in the List of Business for discussion at the meeting of the Legislative Council to be held on the 24th instant :—

*By the Hon'ble Mr.*

[Here insert the Resolution as admitted.]

X. Y.

*Secretary to the Government of India.*

The ruling of His Excellency the President (Lord Hardinge) that "the communication to the press of questions which have not received the President's sanction is regarded as a serious measure and a breach of privilege,"—Legislative Department, Proceedings, March, 1911, Nos. 190—191,—is probably applicable also to the case of a resolution.

*Discussion of Resolutions.*

10. The discussion of resolutions shall take place after all the other business of the day has been concluded.

11. (1) After the mover of a resolution has spoken, other Members may speak to the motion in such order as the President may direct, and thereafter the mover may speak once by way of reply.

(2) No Member other than the mover and the Member in charge shall speak more than once to any motion, except, with the permission of the President, for the purpose of making an explanation.

See notes under rule 11 of the Budget Rules, *ante*.

12. No speech, except with the permission of the President, shall exceed fifteen minutes in duration :

Provided that the mover of a resolution, when moving the same, and the Member in charge may speak for thirty minutes.

13. (1) Every Member shall speak from his place, shall rise when he speaks and shall address the chair.

(2) At any time, if the President rises, any Member speaking shall immediately resume his seat.

14. (1) Any Member may send his speech in print to the Secretary not less than two clear days before the day fixed

for the discussion of a resolution, with as many copies as there are Members, and the Secretary shall cause one of such copies to be supplied to each Member

(2) Any such speech may at the discretion of the President be taken as read.

15. The discussion of a resolution shall be limited to the subject of the resolution, and shall not extend to any matter as to which a resolution may not be moved.

16. When a resolution is under discussion any Member may, subject to all the restrictions and conditions relating to resolutions specified in rules 3 and 4, move an amendment to such resolution :

Provided that an amendment may not be moved which has merely the effect of a negative vote.

17. (1) If a copy of such amendment has not been sent to the Secretary at least three clear days before the day fixed for the discussion of the resolution, any Member may object to the moving of the amendment ; and such objection shall prevail unless the President in exercise of his power to suspend any of these rules allows the amendment to be moved.

(2) The Secretary shall, if time permits, cause every amendment to be printed and send a copy for the information of each Member.

18. A Member who has moved a resolution or an amendment of a resolution may withdraw the same unless some Member desires that it be put to the vote.

19. When, in the opinion of the President, a resolution and any amendment thereto have been sufficiently discussed, he may close the discussion by calling upon the mover to reply and the Member in charge to submit any final observations which he may wish to make :

Provided that the President may in all cases address the Council before putting the question to the vote.

See notes under rule 11 of the Budget Rules, *ante*.

20. (1) When an amendment to any resolution is moved, or when two or more such amendments are moved, the President shall, before taking the sense of the Council thereon, state or read to the Council the terms of the original motion and of the amendment or amendments proposed.

(2) It shall be in the discretion of the President to put first to the vote either the original motion or any of the amendments which may have been brought forward.

21. If any resolution involves many points, the President at his discretion may divide it, so that each point may be determined separately.

22. (1) Every question shall be resolved in the affirmative or in the negative according to the majority of votes.

(2) Votes may be taken by voices or by division and shall be taken by division if any Member so desires.

(3) The President shall determine the method of taking votes by division.

*General.*

23. (1) The President may assign such time as, with due regard to the public interests, he may consider reasonable for the discussion of resolutions or of any particular resolution.

(2) Every resolution which shall not have been put to the vote within the time so assigned shall be considered to have been withdrawn.

24. Every resolution, if carried, shall have effect only as a recommendation to the Governor General in Council.

25. When a question has been discussed at a meeting of the Council, or when a resolution has been disallowed under rule 7 or withdrawn under rule 18, no resolution or amendment raising substantially the same question shall be moved within one year.

The application of the provisions of this rule to the case of a resolution which has been withdrawn is limited to cases where the withdrawal is under rule 18, *i.e.*, after the resolution has been moved.

26. (1) The President shall preserve order, and all points of order shall be decided by him.

(2) No discussion on any point of order shall be allowed unless the President thinks fit to take the opinion of the Council thereon.

(3) Any Member may at any time submit a point of order to the decision of the President.

(4) The President shall have all powers necessary for the purpose of enforcing his decisions.

27. The Governor General may appoint a Member of the Council to preside in his place, or in that of the Vice-President, on any occasion on which a matter of general public interest is discussed in the Council.

This rule is made in exercise of the power conferred by section 5 (2) of the Indian Councils Act, 1908 (9 Edw. 7, c. 4) *ante*.

28. The President, for sufficient reason, may suspend any of the foregoing rules.

## Rules for the asking of Questions in the Legislative Council of the Governor General.

The following rules were made by the Governor General in Council with the sanction of the Secretary of State in Council under section 5 of the Indian Councils Act, 1909 (9 Edw. 7, c 4), on the 15th November, 1909.\*

Government of India's Despatch, Home Department, Public No. 21, dated 1st October, 1908, paragraph 60, and Lord Morley's despatch, Confidential, Public No. 193, dated 27th November, 1908, paragraph 30, and Home Department Resolution, Public No. 4218, dated 15th November, 1909, Gazette of India, 1909, Part I, page 1609, paragraph 20, may be read.

### 1. In these rules—

#### (1) "President" means—

- (a) the Governor General, or
- (b) the President appointed under section 6 of the Indian Councils Act, 1861, or
- (c) the Vice-President appointed by the Governor General under section 4 of the Indian Councils Act, 1909 ;

As regards the position of the senior Ordinary Member of Council as such, see notes under section 15 of the Indian Councils Act, 1861, *ante*.

(2) "Member in charge" means the Member of the Council of the Governor General to whom is allotted the business of the Department of the Government of India to which the subject of the question belongs, and includes any Member to whom such Member in charge may delegate any function assigned to him under these rules ; and

(3) "Secretary" means the Secretary to the Government of India in the Legislative Department, and includes the Deputy Secretary and every person for the time being exercising the functions of the Secretary.

2. Any question may be asked by any Member subject to the following conditions and restrictions.

3. No question shall be permitted in regard to any of the following subjects, namely :—

- (a) any matter affecting the relations of His Majesty's Government or of the Governor General in Council with any Foreign State or with any Native State in India, or

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\* See Notification No. 25, dated 15th November, 1909, in Gazette of India Extraordinary, dated 15th November, 1909, p 444.

- (b) any matter under adjudication by a Court of Law having jurisdiction in any part of His Majesty's Dominions.

The Government of a British Colony is not a Foreign State. See notes to Rule 3 of the *Rules for the Discussion of matters of general Public interest, ante*.

4. No question shall be asked unless it complies with the following conditions, namely :—

- (a) it shall be so framed as to be merely a request for information,
- (b) it shall not be of excessive length,
- (c) it shall not contain arguments, inferences, ironical expressions or defamatory statements, nor shall it refer to the conduct or character of persons except in their official or public capacity, and
- (d) it shall not ask for an expression of an opinion or the solution of a hypothetical proposition.

The intention of rule 4 (a) is that the question should be both in form and substance a genuine request for information.

It has been doubted whether a question setting out an extract containing defamatory or other objectionable matter from some newspaper or other source can on that ground be said to be in contravention of rule 4 (c) and in one case a question containing a quotation grossly offensive to one community was disallowed under rule 8. B, Proceedings February, 1911, Nos. 219—223.

5. In matters which are or have been the subject of controversy between the Governor General in Council and the Secretary of State or a Local Government, no question shall be asked except as to matters of fact, and the answer shall be confined to a statement of facts.

6. A Member who wishes to ask a question shall give notice in writing to the Secretary at least ten clear days before the meeting of the Council at which he desires to put the question and shall, together with the notice, submit a copy of the question which he wishes to ask :

Provided that the President may allow a question to be put with shorter notice than ten days and may in any case require longer notice or may extend the time for answering a question.

An adjourned meeting is a separate meeting within the meaning of this rule. See note under rule 5 of the *Rules for the discussion of matters of general public interest, ante*.

7. (1) The Secretary shall submit every question of which notice has been given to him in accordance with rule 6 to the President, who may either allow it or, when any question is not framed in accordance with rules 4 and 5, cause.

it to be returned to the Member concerned for the purpose of amendment.

(2) If the Member does not, within such time as the President may fix in this behalf, resubmit the question duly amended, the question shall be deemed to have been withdrawn.

Every question of which notice is received by the Secretary, whether in due time or not, is submitted to the President, who has power under the proviso to rule 6 to allow a question to be asked although the notice is shorter than what is required by the rule.

Every question of which notice is received, is first considered in the Legislative Department to see whether it is permissible under the rules and is then sent to the Department to which the subject of the question belongs. That Department returns the file with its remarks on the question and if it does not recommend the disallowance of the question it also places in the file a copy of the reply which it proposes to give. In the meantime if the question appears to be defective in point of form, the Secretary, Legislative Department, suggests necessary amendments to the proposer of the question. The file is then submitted by the Secretary to His Excellency the President for his orders. In the case of questions belonging to the Foreign Department, that Department may submit the file to His Excellency the Viceroy where it considers that His Excellency wishes have to be obtained as member in charge of that Department. B, Proceedings March, 1912, Nos 35—36.

The alternatives mentioned in this rule, namely, allowing or returning for amendment, are clearly not intended to be exhaustive. The obvious intention of rules 3, 4 and 5 is that there is power to disallow a question which offends against any of those rules. See *Miscellaneous File Registers No. 677 of 1911* for a case of a question disallowed under rule 4; see also note under rule 8 of the *Rules for the discussion of matters of general public interest, ante*.

8. The President may disallow any question, or any part of a question, without giving any reason therefor other than that in his opinion it cannot be answered consistently with the public interests or that it should be put in the Legislative Council of a Local Government.

9. No discussion in Council shall be permitted in respect of any order of the President under rule 7 or rule 8.

10. Questions which have been allowed shall be entered in the list of business for the day and shall be put in the order in which they stand in the list before any other business is entered upon at the meeting.

The communication to the Press of questions which have not received the President's sanction is regarded as a serious measure and a breach of privilege. See *Legislative Department Proceedings, March, 1911, Nos. 190, 191*.

11. Questions shall be put and answers given in such manner as the President may in his discretion determine.

12. Any Member who has asked a question may put a supplementary question for the purpose of further elucidating



any matter of fact regarding which a request for information has been made in his original question.

13. The Member in charge may decline to answer a supplementary question without notice, in which case the supplementary question may be put in the form of a fresh question at a subsequent meeting of the Council.

14. These rules, except rules 6 and 7, apply also to supplementary questions :

Provided that the President may disallow any supplementary question without giving any reason therefor.

15. The President may rule that an answer to a question in the list of business for the day shall be given on the ground of public interest even though the question may have been withdrawn.

16. No discussion shall be permitted in respect of any question or of any answer given to a question.

17. All questions asked and the answers given shall be entered in the proceedings of the Council :

Provided that no question which has been disallowed by the President shall be so entered.

18. The President may assign such time as, with due regard to the public interests, he may consider reasonable for the putting and answering of questions.

## Instructions to local Governments regarding legislation in local Councils.

For the explanatory despatch with which these *Instructions* were forwarded to the Secretary of State, see App. V, *post*. For the letters with which they were sent to Local Governments, see App. VI, *post*. For their history and the reasons leading to their issue, see the supplementary note below.

1. (1) Every communication made by a Local Government to the Government of India asking for leave to introduce a Bill, or regarding a Bill which has been introduced, in the local Council, or submitting a law for the assent of the Governor-General under section 40 of the Indian Councils Act, 1861, \* shall be addressed to the Secretary to the Government of India in the Legislative Department.

Legislative Department of Government of India to be addressed.

& 25  
Oct., c. 67.

(2) Nothing in this rule shall be construed to apply to any correspondence or communication regarding a proposal for legislation in a local Council, unless and until the stage is reached at which leave to introduce a Bill is asked for. All correspondence before that stage shall be conducted with the Executive Department of the Government of India to which the subject belongs.

Where the legislation proposed involves substantial questions of principle, leave to introduce a Bill should not be asked for under this rule until such questions have been settled in communication with the Executive Department of the Government of India to which the subject belongs.

Every letter addressed to the Legislative Department of the Government of India by a Local Government under this rule should, therefore, if it asks for leave to introduce a Bill, state explicitly—

- (1) whether or not the Executive Department of the Government of India concerned has been addressed as to the policy of the proposed measure;
- (2) if it has, what was the result; and
- (3) if it has not, why that has not been done.

See Legislative Department's letter Nos. 1691—1696, dated the 22nd October, 1901, to the Governments of Madras, Bombay, Bengal, the United Provinces, the Punjab, and Burma, *post*, App. VI.

Paragraph 2 of the Resolution of the Government of India in the Finance Department, No. 1175, dated the 29th June, 1877, requires that no provision constituting a fund shall be made in any Bill to be introduced in a local Council until the expediency of the measure has been specially considered in that Department. These orders are still in force and are not affected by this rule. See manuscript notes to Legislative Department's A. Pros., October, 1898, Nos. 1—6.

2. (1) Save as otherwise provided in these rules, every draft Bill, with all necessary papers connected therewith, shall, before introduction, be transmitted with a despatch to the Secretary of State.

Draft Bills to be ordinarily reported to Secretary of State and Government of India before introduction.

\* See *ante*.

(2) In the case of a Madras or Bombay draft Bill, the despatch shall be addressed by the Local Government to the Secretary of State direct, a copy thereof and of its enclosures being forwarded for information with a covering letter to the Legislative Department of the Government of India.

(3) In the case of a draft Bill other than a Madras or Bombay draft, the Local Government shall forward the draft, with all necessary papers connected therewith, to the Legislative Department of the Government of India, and the requisite despatch shall forthwith be addressed by the Government of India to the Secretary of State, a copy thereof being forwarded for information to the Local Government.

The instructions regarding Madras or Bombay Bills will now presumably apply also to Bengal Bills.

As to the printing of textually amending Bills see Legislative Department's letter to Local Governments, Nos. 829 - 833, dated the 30th March, 1905, *post*. As to drafting see the last note to r. 4 below.

Twenty-five spare copies of the draft Bill and connected papers should accompany the communication addressed to the Legislative Department of the Government of India under sub-rule (2).

Thirty spare copies of the draft Bill and connected papers should accompany the communication addressed to the Legislative Department of the Government of India under sub-rule (3), twenty-one being required for the Government of India and nine for the Secretary of State.

It is not intended that the issue of the despatch here provided for should be delayed by the Legislative Department to admit of the examination of the draft Bill by the Government of India, but that such examination should be proceeded with after the issue of the despatch and during the two months' interval provided for by r. 4 below.

Previous  
sanction  
when to be  
applied for  
in certain  
cases.

3. (1) Where a draft Bill contains penal clauses, the previous sanction of the Government of India thereto shall be expressly applied for when the draft is reported to the Legislative Department of the Government of India under sub-section (2) or sub-section (3) of rule 2, as the case may be.

(2) Where a draft Bill contains provisions which under section 43 of the Indian Councils Act, 1861, \* or section 5 of the Indian Councils Act, 1892, † require the previous sanction of the Governor General, such previous sanction shall likewise be expressly applied for when the draft is forwarded to the Legislative Department of the Government of India as aforesaid.

In connection with sub-rule (1), see the note to s. 43 (4) of the Indian Councils Act, 1861, *ante*.

\* See *ante*.

† See *ante*.

4. When a draft Bill has been reported to the Secretary of State and the Government of India under rule 2, it shall not be introduced in the local Council until the receipt of a communication from the Legislative Department of the Government of India intimating that the penal or other clauses (if any) requiring previous sanction are sanctioned and that the Secretary of State and the Government of India have no present intention of interfering with the measure :

Provided that, if no such communication and no orders to the contrary are received within two months from the date of the despatch transmitting the draft Bill to the Secretary of State, and if such previous sanction (if any) as is referred to in rule 3, sub-section (2), has been obtained, the Bill may be introduced and proceeded with on the assumption that the penal clauses (if any) are approved and that there is no present intention, on the part of either the Secretary of State or the Government of India, of objecting to the measure.

Provided, also, that the omission of either the Secretary of State or the Government of India to communicate any remarks regarding a measure dealt with under this and the foregoing rules shall not be taken to imply final approval of the measure, and shall not be regarded as in any way affecting the right of the Governor General to withhold his assent therefrom under section 40, or that of Her Majesty to signify Her disallowance thereof under section 41 of the Indian Councils Act, 1861.\*

24 & 25 Vict.,  
c. 67.

Although the Governments of Madras, Bombay and now, also, Bengal address the Secretary of State direct, the replies of the Secretary of State are "to obviate all chance of concurrent or conflicting action," by arrangement addressed to the Government of India for communication to the Local Government concerned. See s. 3 of the despatch from the Secretary of State (Lord Salisbury), No. 33 (Legislative), dated the 15th October, 1874.

The previous sanction referred to in r. 3 (2) is required by Act of Parliament and cannot, therefore, be dispensed with. With the penal clauses it is different.—See s. 43 of the Indian Councils Act, 1861 *ante*, and Appendix II *post*.

The examination, by the Legislative Department of the Government of India, of the Bills of a local Council does not ordinarily extend to matters of form and details of drafting. For these the local Government concerned is held responsible. See the explanation to r. 30 of the *Rules of Business, ante*.

5. (1) The following shall be excepted from the operation of rules 2, 3 and 4, namely :—

- (a) draft Consolidation Bills, pure and simple, consolidating Acts of the local Council concerned ;

Exceptions  
from fore-  
going rules,

\* See *ante*.

- (b) cases in which the approval of the Secretary of State and the Government of India to the principle of the legislation proposed has already been obtained and a further reference is, in the opinion of the Local Government, unnecessary ;
- (c) cases in which the legislation proposed is, in the opinion of the Local Government, of a purely formal or unimportant character ; and
- (d) cases in which the legislation proposed cannot in the opinion of the Local Government, be, without serious evil, delayed in order to admit of a prior report to the Secretary of State and the Government of India.

(2) In every such case as aforesaid the draft Bill may be introduced forthwith :

Provided that, where such a draft Bill contains penal clauses, the Legislative Department of the Government of India shall be applied to for sanction thereto, and the Bill shall not be introduced until the receipt of such sanction or the expiration of one month from the date of the application therefor without the receipt of any reply from the Legislative Department of the Government of India :

Provided, also, that, where such a draft Bill contains provisions which, under section 43 of the Indian Councils Act, 1861,\* or section 5 of the Indian Councils Act, 1892,† require the previous sanction of the Governor General, such previous sanction shall be applied for to, and obtained from, the Legislative Department of the Government of India before the introduction of the Bill.

See the first note to r. 4 above. Repealing and Amending (or Statute Law Revision) Bills may properly be dealt with as falling under clause (c) of sub-rule (1).

Procedure  
in excep-  
tional cases.

6. (1) Where a draft Bill is dealt with under rule 5 and introduced without a prior report to the Secretary of State and the Government of India, a copy of it and of all necessary papers connected therewith shall forthwith be transmitted to the Secretary of State with a full explanatory despatch.

(2) The instructions contained in sub-sections (2) and (3) of rule 2 shall apply, *mutatis mutandis*, in the case of every despatch issued under sub-section (1) of this rule.

(3) Where a draft Bill is dealt with under rule 5, no reply to the explanatory despatch referred to in sub-section

\*See ante.

† See ante.

(1) of this rule need be awaited before the Bill is further proceeded with.

It follows also that no reply from the Government of India need in such a case be awaited before the Bill is further proceeded with.

7. (1) Where, after a Bill has been introduced in a local Council, whether as an exceptional measure dealt with under rule 5 or otherwise, an amendment is proposed in it which the Local Government is prepared to accept, but which, owing to its being outside the principle of the Bill as introduced or for any other reason, it considers that it cannot accept without a reference to the Government of India, the requisite steps should be taken to delay the progress of the Bill through Council pending the result of a reference to the Legislative Department of the Government of India. Amend-  
ments in  
Council.

(2) Where a reference is made to the Legislative Department of the Government of India under this rule, the amendment so referred should not be accepted until the receipt of a favourable reply, or until the expiration of one month from the date of the reference without the receipt of any such reply.

(3) Where a reference is made under this rule and the Government of India consider that the amendment so referred is one which ought not to be accepted without a further reference to the Secretary of State, an intimation to that effect will be sent to the Local Government by the Legislative Department of the Government of India. The Secretary of State shall then be addressed by the Government of India, and the amendment shall not be accepted until intimation of the arrival of a favourable reply from the Secretary of State is received by the local Government from the Legislative Department of the Government of India, or until the expiration of two months from the date of the reference made by the Local Government without the receipt of any further communication on the subject from the Legislative Department of the Government of India.

(4) Where in the course of a Bill through Council an amendment is proposed which requires any such previous sanction as is referred to in rule 3, such previous sanction shall be applied for to, and obtained from, the Legislative Department of the Government of India before the Bill so amended is passed.

8. In every draft Bill a reference shall be added on the margin of each clause to show whether it is based on any, and, if so, on what, provision of the existing law. Such marginal references may be retained during the progress Marginal  
references to  
clauses.

of the Bill through the local Council, but shall be removed from the copy submitted, in the event of the passing of the measure, for the assent of the Governor or Lieutenant-Governor, as the case may be, and also from that submitted to the Legislative Department of the Government of India for the assent of the Governor General.

It would be well if to these instructions were added another to the effect that a copy of every despatch regarding legislation in a local Council transmitted direct to the Secretary of State by the Government of Madras or the Government of Bombay or the Government of Bengal, in continuation of a despatch issued under r. 2 (3) or r. 6, should be forwarded for information to the Legislative Department of the Government of India. The want of such an arrangement has more than once occasioned some inconvenience and misunderstanding.

As regards the issue of these revised instructions in supersession of those formerly in force, see Legislative Department's Proceedings, October, 1898, Nos. 1-6, and the notes in Home Department's Judicial A. Proceedings, November, 1901, Nos. 172-173.

The orders which were thus superseded in 1898, required that correspondence connected with legislation in local Councils should be conducted in different Departments in accordance with the nature of the subject matter and the particular stage reached. The Executive Department concerned had to be addressed by the Local Government as to the policy of a measure, and, if the previous sanction of the Governor General was necessary, that Department had to be asked to obtain it. But, as more than one Executive Department might be concerned, Local Governments often found it difficult to decide which to address, and frequent mistakes were in fact made. Moreover, the necessity for obtaining previous sanction, not being always obvious, was apt to be overlooked both by Local Governments and by Executive Departments. Thus, if any penal provisions were contemplated, the Home Department had, under the express orders of the Secretary of State, to be consulted, and, therefore, that Department also had to be separately addressed, unless of course, it happened to be the Executive Department concerned. Again, the fact that a clause is penal is not necessarily apparent on the face of it; for such an effect may arise from the use of words referring to, or extending the operation of, some other enactment. Hence the necessity for a reference to the Home Department was sometimes lost sight of through want of familiarity with the Indian Statute-book. When a Bill was introduced, the Local Government had to send it to the Legislative Department, and by the Legislative Department it had to be forwarded to the Secretary of State. And, when a Bill was passed, the Local Government was required once more to address the Executive Department concerned, whereupon that Department first obtained the Governor General's administrative sanction and then transferred the case to the Legislative Department, by which the Governor General's formal assent was secured and communicated to the Local Government and the Secretary of State. The intricacy of this procedure was the cause of frequent delay, misunderstanding, and complaint, and the matter was eventually brought to a head by a strong representation from one Local Government urging that "the principle be clearly enunciated that the Government of India in one Department is the Government of India in all Departments, and that Local Governments should not be required to address different Departments separately on the subject of the same Bill." In the case of local legislation more

than one Department must in every instance be concerned, and it was decided to make the Legislative Department solely responsible for the conduct of all business of the kind, not only because such business would seem *prima facie* properly to fall within its province, but also because, whatever Executive Departments may be concerned, the Legislative Department at all events is concerned in every case and must be referred to at some stage. The Legislative Department does not—see the notes to r. 1 above—come in until the time for legislation is ripe; but from that time onwards it has sole charge of the proceedings. Sometimes, no doubt, it has to act as a mere channel of communication, and to issue orders which it is incompetent to suggest and which have to be dictated to it by an Executive Department; and this, no doubt, may appear anomalous. But the change has, it is thought, been an improvement. It has reduced delays by admitting of simultaneous inter-departmental references, where necessary; for the Legislative Department can tell, almost at a glance, what Executive Departments are concerned at the various stages, and where more than one are interested, it can refer to each at the same time. Further, it has simplified correspondence with the Secretary of State, who knows now to look to the Legislative Department only for everything connected with local legislation which has reached, or is about to reach, the Council stage. And it has obviated friction with Local Governments, with whom the only difficulty now felt is in connection with a tendency to come up to the Legislative Department with a regular Bill before the administrative questions involved have been fully considered. The issue of the orders referred to in the notes to r. 1 above was intended to check this tendency. On the other hand unnecessary references back to Local Governments may be avoided by attention to the orders contained in s. 1 of the Home Department's Office Memorandum of the 22nd November, 1901, reproduced in the notes to r. 28 of the *Rules of Business* above.



## APPENDIX I.

DESPATCH FROM THE SECRETARY OF STATE REGARDING THE  
INDIAN COUNCILS ACT, 1861.

No. 14 of 1861.

From

The RIGHT HON'BLE SIR CHARLES WOOD,\* BART.,  
Her Majesty's Secretary of State for India.*India Office, London, the 9th August, 1861.*

MY LORD,

I herewith transmit a copy of the Act† recently passed by Parliament to make better provision for the constitution of the Council of the Governor General of India, and other purposes, and in so doing I take the opportunity of acknowledging the receipt of the letters noted in the margin, and at the same time of expressing my obligations for the valuable assistance I have derived from the several communications which I have received from Your Lordship in Council, bearing on the important subjects for which provision is made by the Act.

2. In forwarding to Your Lordship in Council the Act which brings to a close the labours of the present Legislative Council of India, it is due to that body that I should place upon record the high sense I entertain of the important services it has rendered in the marked improvement which it has affected in the legislation of India. Since the year 1853, when the Council received its present constitution, it has had to deal with some of the most important questions which could have been submitted to the consideration of any legislative body. The projects of law laid before it have been carefully considered and ably discussed, and the result of its labours has been to place on the Statute book of India a series of sound and judicious measures which eminently establish its claim to the gratitude of the country and the thanks of Her Majesty's Government.

3. The principal objects contemplated by the present Act are to impart greater efficiency to the Government of India

\* Afterwards Viscount Halifax.

† The Indian Councils Act, 1861, see *ante*.

‡ See *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, p. 39.

§ See *ibid.*, p. 42.

|| See *ibid.*, p. 43.

Acknowledgments as to past legislation.

Principal object of Statute of 1861.

and to the Governments of the Presidencies of Madras and Bombay in the discharge of their executive functions; to prescribe the mode in which the power of making laws and regulations is henceforth to be exercised by the Council of the Governor General; to restore to the Councils of the subordinate Presidencies, at the same time that they are strengthened for the purpose, the power of legislation; to authorise the Governor General in Council, acting under the sanction of the Home Government, to confer upon Lieutenant-Governors of Provinces the power of making laws and regulations (with the aid of persons specially summoned for that purpose) for the Provinces which they respectively govern; and to provide for the temporary Government of India in the event of a vacancy in the office of Governor General. To the most important provisions of the Act bearing on these several matters, I propose to refer more particularly in the sequel of this Despatch.

4. An important alteration has been made in the constitution of the Executive Council of the Governor General by the adoption of Your Lordship's recommendation that power should be obtained from Parliament for the appointment by the Crown of two Members (instead of one), one of whom shall be a Barrister. Steps will be immediately taken for filling up the appointment thus created by the Act.

Section 2.  
Constitution  
of Executive  
Council; appointment  
to it of  
Barrister.

5. By the fourth section of the present Act Ordinary Members of the Council continue to be Ordinary Members of Council under the Act. It is not my intention to deviate from the usual practice respecting the time for which a seat in Council has been held; and, with respect to the Members of the Council who will continue to hold their seats under the present Act, the term of five years will be reckoned from the time when they respectively first took their seats in Council. The question of the salaries of future Members of Council will be considered by me in Council, and the result communicated to your Government.

Section 4.  
Five years' tenure of  
appointment  
of ordinary  
Member.

6. Hitherto it has been the practice, on the occasion of the Governor General quitting the Presidency for any other part of India, to pass an Act providing for the exercise by him of executive powers during his absence. By section 6 of the Act now forwarded, resort to legislation in such case is rendered unnecessary, and an order of the Governor General in Council is substituted for an Act of the Legislature.

Section 6.  
Provision for  
absence of  
Governor  
General.

7. The only other provision of the Act relating to the Executive Council of the Governor General to which I consider it necessary to advert is section 8, which authorizes the Governor General from time to time to make rules and

Section 8.  
Power to  
make rules  
of executive  
business.

orders for the more convenient transaction of business in his Council. By the arrangement of the business already made by Your Lordship in Council, a remedy has of late years been applied to the cumbrous mode of conducting business which formerly prevailed. The expediency of such arrangements, and of carrying them to such an extent as the Governor General may think desirable for the more convenient despatch of public business, is formally recognized by section 8.

Object of rules to be made under section 8.

8. I need hardly impress upon Your Lordship the necessity of caution in framing the rules and orders so as not to exceed the limit of the discretion conferred upon the Governor General by this section of the Act. The object to be kept in view is the *more convenient transaction of business*. There is nothing in the provision of a nature to detract from the authority or responsibility of the Governor General, or of the Council.

Reduction of salary of Secretaryship to £4,000 per annum.

9. I concur with Your Lordship that, after the system of departmental responsibility in the manner proposed shall have come into operation, the salaries of some of the Secretaryships of the Government of India will admit of reduction, and that those which now stand at 5,000*l.* per annum each might, on vacancies, reasonably be reduced to 4,000*l.* per annum.

Legislative powers of Governor General in Council.

10. Considerable discussion and interchange of opinion between Her Majesty's Government and Your Lordship in Council has recently taken place in regard to the best mode of conducting the legislation of India and on this subject the Act contains some very important provisions. The power of legislation, taken away from the Councils of the subordinate Presidencies by the Act of 3rd and 4th Will. 4, c. 85, is, to a great extent, to be restored to them, and new local Legislatures are to be established in other parts of India. The legislative powers conferred on the Government of India by the abovementioned Act are left unimpaired, but under the present Act are to be exercised, for the most part, in matters of general administration, and such as affect the interest of our Indian Empire at large.

Changes effected.

11. I proceed to notice some of the most important provisions by which these changes are to be effected.

Section 10. Selection of Additional Members of Governor General's Legislative Council.

12. In consequence of the repeal, by section 2 of the present Act, of section 22 of the Act of the 16th and 17th Vict., c. 95, the Legislative Councillors appointed under the repealed enactment will cease to hold office in the Council on the present Act coming into operation. Provision is made by section 10 for the appointment of other additional Members of the Council of the Governor General, who are to be Members only for the purpose of making laws and

regulations. They are to be selected by the Governor General from the servants of the Government and from other residents in India, European and Native, from all parts of India, the only limitation on the power of the selection being that not less than one-half of the number nominated are to be persons not holding any office under Government.

13. The Imperial Legislature has by this Act provided, for the first time, for the admission of Europeans independent of the Government and of Natives of India to take part in the important work of legislating for India. I have no doubt this measure will be hailed with satisfaction throughout the country. I entertain as little doubt that Your Lordship will be able to fill up these appointments with persons in every way qualified to give the Government important and valuable assistance in matters that may come before it, and I anticipate that the introduction of intelligent Native gentlemen into the Council will bring to its deliberations a knowledge of the wishes and feelings of the Native population, which cannot fail to improve the laws passed by the Council by adapting them to the wants of the great mass of the population of India.

Introduction  
of non-official  
Members.

14. I am quite aware that there cannot but be considerable difficulty in assembling at any one place, official and non-official persons from distant parts of India, who may bring, to the Council of the Governor General the advantage of their knowledge of different parts of the country. The grant of legislative powers to Councils in other parts of India renders it less necessary to have such persons present in Your Lordship's Council, where at present the whole legislation of India is concentrated; but, nevertheless, I think it most desirable that servants of the Government in the other Presidencies, and from the North-West and the Punjab, should be summoned to a body which is to legislate on matters affecting the whole of India, and I shall be glad to find that influential Native gentlemen from distant places have, even at some personal inconvenience to themselves, responded to the call of the head of the Government to take their places in the Council when legislating for the peace and good government of their country.

Desirability  
of appointing  
official serving  
under  
Local  
Governments  
and influential  
Natives.

15. To enable Your Lordship the more readily to avail yourself of the services of such persons as occasion may require as well as to obviate the necessity for issuing fresh summonses simultaneously for the whole number of additional Councillors on the expiration of the term of service of those first appointed, which the immediate nomination of the entire number will impose, I think it expedient that Your Lordship should not summon at once the maximum number of Members allowed by the Act, but appointing

Additional  
Members to  
be app. inted  
by degrees.

part of them at first, should leave the remaining number to be nominated at such times and on such occasions as Your Lordship may think proper.

Section 18.  
Rules for  
conduct of  
legislative  
business.

16. It will be the duty of Your Lordship in Council to make in the first instance, subject to subsequent alteration at meetings for the purpose of making laws and regulations the rules for the conduct of business at such meetings. The experience of the past has shown, as it appears to me, that an error was committed in adopting numerous rules under the name of "Standing Orders," and thereby imparting to the proceedings of the Council a much more formal character than was contemplated by the Act of 1853. The rules of procedure at meetings for making laws and regulations should be few and simple, and the business should be conducted, agreeably to Your Lordship's suggestion, much in the same way as in a committee or a commission. This is the more indispensable in the Council of the Governor General as well as, in those of the North-West and the Punjab, where Native gentlemen unacquainted with the English language may not improbably be present, and who will be prevented from taking their part in the business of the Council, unless some such arrangement be made.

Mature deli-  
beration and  
discussion of  
laws.

17. No law, except one arising out of some pressing emergency, should be passed without full opportunity for mature deliberation and discussion, and the intervals of discussion should be such as to allow the Members of Council adequate opportunity of reflection and inquiry.

Publicity as  
to legislation.

18. As to the publicity which should attend the proceedings of the Councils at meetings for making laws and regulations, I concur very much in the remarks of Your Lordship in your letter of the 15th January last. In the local Councils of Calcutta, Madras and Bombay, in which it is probable that all the Members, including Natives, will speak the English language, I am not disposed to interfere with the present practice; but it may be necessary to vary the mode of publishing the reports of discussions, as suggested by Your Lordship, in the Council of the Governor General, and of the North-West Provinces and the Punjab. Your Lordship has stated, in your Despatch of the 15th January last, the evil which has been caused by the publication of speeches delivered in the Legislative Council and the impression made by them on the Native population. Care should be taken, by an early publication of the views of the Government, to prevent the public mind being misled, and other means will probably occur to you for meeting this particular difficulty.

Publication of  
authoritative

19. I think it of the highest importance that correct reports of the proceedings of the several Councils, under the

authority of the Council itself, should be sent forth to the public, and I request that you will take into your consideration measures for ensuring this very desirable object. percentage of proceedings.

20. You will transmit to me a copy of the rules as soon as you shall have prepared them. Copy of rules called for.

21. I entertain a decided opinion that the Councils should not sit permanently for the purpose of making laws and regulations, but should be called together by summons from the head of the Government when projects of law, prepared by the proper officers under the supervision of the Executive Government, are ready for discussion. It is probable that, by adopting this course, Bills will come before the Council better prepared than when hurriedly framed for a Council in session, and will be better considered by the Council when brought before them, and thus much unnecessary legislation will be avoided, and much public time saved. The adoption of this plan, moreover, will be necessary to secure for you the services of Native Gentlemen at a distance, and of those persons whose time, like that of the members of the mercantile communities of the Presidency-towns, is much occupied with their own private engagements. Legislative Councils not to sit permanently.

22. You will observe that no provision is made for the appointment of a Vice-President at meetings for the purpose of making laws and regulations. In the absence of the Governor General and the President of the Council, the senior Member of the Council will preside. President in absence of Governor General.

23. The additional Councillors provided for by the Act are to be called in to assist the Council of the Governor General in matters of legislation. Members of the Council will, of course, exercise their independent judgment in regard to matters brought before them, but the Council at its meeting for making laws and regulations is not to be a body separate and distinct from the Council of the Governor General. Petitions relating to legislative matters should be addressed to the Governor General or Governor or Lieutenant-Governor in Council, as the case may be; and in recording its proceedings, each Council should be designated according to the form followed in the Act, and no other. Independence of Members of Legislative Councils.

24. I may frankly state to Your Lordship in Council that one object of section 19 is to prevent the Legislature from interfering with the functions of the Executive Government, and occupying its time with matters which are not directly or immediately connected with the special duties assigned to it. The closing proviso of the section is in accordance with Lord Dalhousie's recommendation to the Council in his Minute of the 17th May 1854, and Section 19. Non-interference with Executive Government.

numbers 60 and 61 of the Standing Orders. This section renders unnecessary any separate reply to your letters in the Legislative Department, Nos. 6 and 7, dated, respectively, the 14th and 18th of March last.

Sections 20,  
21 and 22.

25. Sections 20, 21 and 22 are re-enactments of former provisions, with such alterations as are rendered necessary by the changes effected by the present Act, and by the transfer of the Government of India from the East India Company to the Crown.

Section 23.  
Ordinances.

26. By section 23 the Governor General of India is vested with a new and extraordinary power of making and promulgating Ordinances in cases of emergency on his own responsibility. It is due to the supreme authority in India, who is responsible for the peace, security and good government of that vast territory, that he should be armed with this power, but it is to be called into action only on urgent occasions, the reasons for a resort to it should always be recorded, and these, together with the Ordinance itself, should be submitted, without loss of time, for the consideration of Her Majesty's Government.

Section 25.  
Laws for non-  
regulation  
provinces.

27. By section 25 doubts are removed as to the validity of rules and regulations which have been passed by any of the Governments in India for the territories known as "non-regulation provinces." You will observe, however, that henceforth legislative measures affecting any of the territories, regulation or non-regulation, under the dominion of Her Majesty at the date of the passing of the Act, must be passed either by the Council of the Governor General, or by that of the Government to which such territories may be subject.

Sections 26  
and 27.  
Provision for  
leave on  
medical  
certificate  
of Ordinary  
Members.

28. It has been found necessary, on some occasions, to grant leave of absence for a short period, on medical certificate, to a Member of the Executive Council, though he was not admitted by law to this privilege. This has now been sanctioned by section 26, and by section 27, the Governor General, or the Governor of a minor Presidency, as the case may be, is authorized, when no provisional appointment has been made from Home, to make a temporary appointment to the office of Councillor either on the occurrence of a vacancy, or when the incumbent may be absent.

Sections 28  
to 41.

29. It is unnecessary for me to enter into any detail as to sections 28 to 41, which, *mutatis mutandis*, contain, in regard to the Governments of Madras and Bombay, the same provisions as have been enacted in previous corresponding sections in relation to the Supreme Government.

Section 42.  
Legislative  
Councils for

30. By section 42 the power is conferred upon the Governor in Council (constituted as stated in section 29)

of each of those Presidencies to make laws and regulations for the territories subject to his authority. Your Lordship will observe, however, that while the power of legislation is, to a great extent, thus restored to the minor Presidencies, much greater control over the exercise of that power is given to the Governor General of India than was the case before the passing of the Act 3rd and 4th Will. 4, c. 85. The rules for the conduct of business at meetings of the Councils for making laws and regulations are to be submitted for the sanction of the Governor General in Council,\*

\*Section 37.

†Section 40.

and no law or regulation is to have validity until sanctioned by the Governor General.†

31. It is advisable that the several Legislative Councils should undertake, as far as possible, the necessary legislative business for the territories under their respective jurisdictions. The circumstances of different parts of India are widely different, and may, even under the same general head of administration, require widely different measures of a practical character; and it will be no ground for condemning a measure on any particular subject passed for one Presidency that it differs, in some respects, from another measure on the same subject for another Presidency. There will, however, always remain some important subjects to which, for the most part, general legislation alone is applicable, and which should be reserved to be dealt with by the Council of the Governor General. Such are the subjects specified in section 43 of the Act. If, however, it should appear to the Governor General more expedient that enactments on any of these subjects, so far as regards any Presidency or Lieutenant-Governorship, may be more conveniently passed by the Governor or Lieutenant-Governor in Council, legislation in regard to those subjects by the local Legislature, with the previous sanction of the Governor General, is permitted by the terms of the section.

Division of legislative measures between Imperial and local Legislative Councils.

32. There is nothing in the terms of the section, or in any other part of the Act, which takes away from the Council of the Governor General the power of legislation in regard to all matters whatsoever connected with any part of Her Majesty's dominions in India, and it is possible that there may be other subjects than those enumerated, which may be considered as properly coming within the cognizance of the highest legislative authority. The division of legislative measures into two classes will not be difficult, and as a general rule, the Supreme Legislature should as little interfere with matters of local administration as a Local Legislature should be permitted to interfere with those matters of the general administration which are re-

General powers of Governor General's Legislative Council not affected.



served to be dealt with by the Council of the Governor General.

Sections 44 to 48. Establishment of local Legislative Councils in the Lower Provinces, the North-West Provinces and the Punjab.

33. By sections 44 to 48, inclusive, the Governor General in Council is empowered to extend the provisions of the Act touching the making of laws and regulations for the Presidencies of Madras and Bombay, to the Bengal Division of the Presidency of Fort William, to the North-West Provinces, the Punjab and to any other Provinces which may hereafter be placed under a Lieutenant-Governor under section 46. Your Lordship in Council will decide upon the number of additional Councillors to be nominated by each Lieutenant-Governor, which in no case should exceed the number allowed by the Act to the Governors of Madras and Bombay.

Local Legislative Council in Lower Provinces of Bengal to be established without delay.

34. I gather from communications already received that Your Lordship will deem it expedient to give effect without delay to the provisions of the Act in Bengal, the North-West Provinces and the Punjab. Her Majesty's Government are of opinion that, as regards the Bengal Division of the Presidency of Fort William, the change should be introduced with as little delay as possible: and I leave it to Your Lordship to determine at what time you will take the same course as regards the North-West Provinces and the Punjab.

Immediate measures to be taken first in connection with Imperial, Madras and Bombay Legislative Councils.

35. With reference to the foregoing remarks, I have now to request that Your Lordship in Council will take immediate measures for placing the Council of the Governor General for making laws and regulations on the footing prescribed by the Act, and enter into communication with the Governments of Madras and Bombay respecting the adoption of the necessary measures for bringing the Act into operation in those Presidencies. When your measures shall be sufficiently matured to admit of practical effect being given to the provisions of the Act in your own Council and in the Councils of the Governors of Madras and Bombay, you will announce the same by proclamation in the official Gazettes of the several Presidencies, until which time the power of making laws and regulations will, under section 16 of the Act, continue to be exercised by the Council of the Governor General as constituted by the Act of the 16th and 17th Vict., c. 95.

Bengal Council next to be established.

36. You will then take the necessary steps for extending such of its provisions as relate to the making of laws and regulations in the Presidencies of Madras, and Bombay, to the Bengal Division of the Presidency of Fort William. It will be seen from section 49 that the proclamation by the Governor General in Council for constituting **any** Council for the purpose of making laws and regulations must be transmitted to the Secretary of State for the previous sanc-

tion of the Crown. To this provision you will carefully adhere, forwarding the proclamation relating to the Bengal Division with as little delay as possible, and those relating to the North-West Provinces and the Punjab either with it, or at such future periods as Your Lordship in Council may deem expedient.

37. With regard to section 50, it is only necessary to observe that, when no provisional successor to the office of Governor General shall be in India, any vacancy occurring in that office will, until the arrival of a successor appointed by Her Majesty, be supplied by one of the highest functionaries in India holding office under the immediate appointment of the Crown, and until he assumes the function of Governor General the Government will be administered, as heretofore, by the Senior Ordinary Member of Council, as would be done under the provisions of the 3rd and 4th Will. 4, c. 85, section 62, if no provisional successor were on the spot.

Section 50  
General.

38. Of the projects of law now under consideration I am very anxious that the Code of Criminal Procedure should be passed before the present Act comes into operation. Of the rest, some have got to that stage which renders it advisable that they should be enacted by the Legislature as at present constituted, while others, especially those of a local character, may be withdrawn, and re-introduced, if necessary, into the Councils to which, under the new system, they will respectively belong.

Pending  
legislation.

39. Your Lordship in Council will impress upon the subordinate Governments the necessity of keeping the establishments required for conducting the legislative business of the Councils at as low a point as is consistent with efficiency.

Economy in  
establish-  
ments.

40. It only remains for me, in conclusion, to express the great gratification I feel in being permitted to avail myself of Your Lordship's assistance in giving effect, before you quit India, to the intentions of the Imperial Legislature. I look with great confidence to the advantage which will be derived from the commencement of the new system under Your Lordship's directions. Your Lordship's experience in India, and the attention which you have given to this most important subject, render Your Lordship most eminently fitted to give effect to the measures introduced by the Act for the government and legislation of India; and the successful accomplishment of this may be the last, though it will not be the least, of the services which you will have rendered to your Sovereign in that country.

Conclusi-

## APPENDIX II.

DESPATCH FROM THE SECRETARY OF STATE REGARDING PENAL  
CLAUSES IN THE BILLS OF LOCAL COUNCILS.

No. 35 of 1862.

From

The RIGHT HON'BLE SIR CHARLES WOOD,\* BART.,  
G.C.B.,

Her Majesty's Secretary of State for India.

*India Office, London, the 1st December, 1862.*

MY LORD,

Your letters Nos. 16, 17 and 18, dated 5th September,  
1862, having been considered by

By the Council of the Govern-  
ment of Madras

1st "An Act to make better  
provision for the management  
of boats and catamarans in the  
Madras roads."

2nd - To prevent damage to  
the pier, to regulate the traffic  
and to provide for levying of  
tolls upon the same."

By the Council of the Govern-  
ment of Bombay -

"An Act for the establish-  
ment and regulation of Refor-  
matory Schools for Juvenile  
Offenders."

me in Council, I have to express  
my approval of Your Lordship  
having withheld, for the reasons  
stated in your minutes of the  
25th July and the 13th August  
last, your assent to the Acts noted  
in the margin.

Local legisla-  
tion consti-  
tuting new  
offences.

2. Cases no doubt will occasionally occur when special  
legislation by the Local Governments for offences not included  
in the Penal Code will be required. In these cases the  
general rule should be to place such offences under penalties  
already assigned in the Code to acts of a similar character.  
This mode of legislation, though an addition to, cannot be  
deemed an alteration of, the Penal Code; but if any devia-  
tion is considered necessary, then the law requires that your  
previous sanction should be obtained.

Indian Penal  
Code intended  
to be  
exhaustive.

3. It was the intention of Her Majesty's Government  
that, except in local and peculiar circumstances, the Code  
should contain the whole body of penal legislation, and that  
all additions or modifications suggested by experience should,

\* Afterwards Viscount Halifax.

from time to time, be incorporated in it, and the duty of maintaining this uniformity of course devolves upon Your Excellency in Council.

4. As a general rule for the guidance of the local Councils, it would probably be expedient—and this appears also to be your own view—that all Bills containing penal clauses should be submitted for your previous sanction.

Penal clauses  
in local  
Councils Bills  
to be  
submitted  
for previous  
sanction of  
Government  
of India.

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With this letter should be read Sir H. S. Maine's Minutes, Nos. 6 and 7, in which the question what is meant by "altering in any way" the Penal Code is discussed. Sir Henry Maine admitted that "it was difficult to contend that by constructive alterations one did not alter *in some way* the Penal Code;" but he concluded in favour of the argument to the contrary, although that argument was derived entirely from the inconvenience—and, judged by its consequences, the unreasonableness—of the affirmative construction. He further pointed out that the Bills falling under each of the different heads (except the fourth) specified in s. 43 of the Indian Councils Act, 1861—*ante* had a distinct common character. "But, if the fourth prohibition covers constructive alterations of the Code, the Bills to which it applies are altogether miscellaneous and include nearly all the measures which would naturally be brought before a local Legislature."

In the result, it has always been understood that previous sanction to the penal clauses in a Bill of a local legislature not directly altering the Indian Penal Code is *not* required by the Statute of 1861; that it is required only as a matter of expediency in accordance with the views expressed in the despatch above; and that it is the previous sanction of the *Governor General in Council*, i.e., of the Government of India in the Home Department, and not that of the *Governor General* personally, that should be applied for and accorded in this connection. See Legislative Department's A. Pros., November, 1898, Nos. 17-41.

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## APPENDIX III.

DESPATCH FROM THE SECRETARY OF STATE REGARDING THE  
INDIAN COUNCILS ACT, 1892.

No. 15 of 1892.

From

The RIGHT HON'BLE VISCOUNT CROSS,  
Her Majesty's Secretary of State for India.*India Office, London, the 30th June, 1892.*

MY LORD MARQUIS,

I forward herewith a copy of the Act recently passed by Parliament to amend the Statute under which the meetings of the several Councils in India assembled for the purpose of making Laws and Regulations have been held since 1861.

Success of  
Statute of  
1861.

2. That Statute imported into the legislative constitution of British India, as a recognized principle of public policy, provisions for the admission into all the Councils, when assembled for the purpose of making laws, of Additional Members, Native and European, a certain proportion of whom must be unconnected officially with the executive Governments, and who would take an independent and responsible share in the legislation of the country. The anticipations upon which this important step was taken in 1861 have, during the past thirty years, been amply fulfilled. There can be no doubt that the Governor General's Council has been relieved of much business which the local Councils, which were then finally established, have proved themselves thoroughly competent to undertake; while the whole legislative system of India has benefited from the presence in the Councils of the Additional Members who have brought much ability, experience and special knowledge to bear upon the discharge of their duties.

Extension of  
functions of  
Legislative  
Councils,  
desirable.

3. Upon these considerations, and having regard to the progress of administration in recent years, to the material and moral improvement of the country generally and to the expediency of strengthening the Councils and extending their functions in some proportion with the growing attention in India to public affairs, Her Majesty's Government, after considering the recommendations of Your Excellency and of Your Excellency's predecessor, have induced Parliament to resolve that the Councils may with

advantage be enlarged. It has been determined, moreover, upon the same grounds, to relax in some degree those provisions of the original Act which confine the proceedings of the Councils to the discussion and enactment of Bills introduced at their meetings. Accordingly, in the Act, which has just become law, certain amendments have been made upon which it is right that I should take this opportunity of recording some observations.

4. It is provided, in the first place, that the additional Members to be summoned by the Governor General to his Council (and by the Governors of Madras and Bombay to the Councils of those Presidencies), when met for the purpose of making laws and Regulations, may be augmented up to a limit fixed in the Act. The Governor General is also empowered to make a considerable increase of the number of the Members who may be summoned for the same purpose by the Lieutenant-Governors of Bengal and of the North-West Provinces. Your Excellency will notice that while these Members are to be nominated, as heretofore, by the Governor General, the Governors and the Lieutenant-Governors, respectively, the Governor General in Council is now authorized, with the approval of the Secretary of State, to make regulations as to the conditions under which such nominations shall be made, and to prescribe the manner in which the regulations shall be carried into effect.

Section 1.  
Provision for  
increase in  
number of  
Additional  
Members.

5. In the second place, the Governor General in Council is invested with power to make rules from time to time authorizing the discussion of the Annual Financial Statement, and the asking of questions under such conditions as shall be in the said rules prescribed. The Act also contains similar provisions in regard to the Councils of the Governors and Lieutenant-Governors.

Section 2.  
Provision for  
discussion of  
Annual  
Financial  
Statement  
and asking of  
questions.

6. I have no doubt that Your Excellency in Council and the several Local Governments will lose no time and spare no pains in considering and preparing the rules necessary for carrying into operation these important provisions, which have been introduced with the avowed objects of bringing the Legislatures into closer relation with the best representatives of public opinion in India, and of multiplying the opportunities for an interchange of views and information between the Governments and their Councils. I need hardly add that the ultimate nominating authority still rests with those to whom it was entrusted by the Statute of 1861, or that the responsibility attaching to the careful exercise of this authority by no means diminishes, as the number of the non-official Members is increased, and as the scope of their attributes is enlarged. It appears to me probable, nevertheless, that the diffusion in the more advanced

General in-  
structions.

provinces of education and enlightened public spirit, and the recent organization of local self-government, may have provided in some instances ways and means of which the Governments may properly avail themselves in determining the character that shall be given to the representation of the views of different races, classes and localities. Where corporations have been established with definite powers, upon a recognized administrative basis, or where associations have been formed upon a substantial community of legitimate interests, professional, commercial or territorial, Your Excellency and the Local Governors may find convenience and advantage in consulting from time to time such bodies, and in entertaining at your discretion an expression of their views and recommendations with regard to the selection of Members in whose qualifications they may be disposed to confide. It is in full reliance upon the benefits to be expected from enlisting the support and co-operation of competent Members, and from a more extensive devolution upon the Provincial Councils of the legislative business that particularly concerns the population with whose needs and circumstances these Councils should be specially conversant, that I recommend this Statute to the very careful attention of Your Excellency's Government, and of the other Governments in India whose duty it will be to give effect to its provisions.

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## APPENDIX IV.

## CORRESPONDENCE REGARDING LEGISLATION AT SIMLA.

*Extract from Despatch No. 14 (Public), dated the 20th January, 1887, from the Secretary of State (Lord Cross).*

"7. In a further despatch of the 20th December, 1877, Legislative, No. 68, the Marquis of Salisbury reverted to the same important subject, saying,—‘Any method of transacting legislative business which, in respect of place or time, unnecessarily discourages or prevents the attendance of these (the non-official Additional) Members must be condemned as defeating the plain intention of the Imperial Legislature. But, under the present practice of the Government of India, there is only one place at which, and only one period of the year during which, the systematic attendance of Additional Members can be secured. As a rule, the mercantile gentlemen summoned to your Council can attend it at Calcutta alone; and since the extension of railways, Calcutta is probably, on the whole, the place at which it is most convenient for Native gentlemen of rank to assist in your deliberations. \* \* \* Under these circumstances, I am of opinion that Your Excellency will best give effect to the important Statute from which so large a portion of your power is derived, by making such arrangements as will admit of your Executive Government being, as a rule, represented at Calcutta during the whole period between the 1st day of November and the 15th day of April.’”

*Extract from despatch of Lord Dufferin's Government to the Secretary of State, No. 16, dated the 15th March, 1887.*

"25. \* \* \* \* Your Lordship emphasizes Lord Salisbury's opinion that our Legislative Council should not, as a rule, assemble at Simla for the purpose of making laws of general application, save in cases of emergency. In this view we entirely concur, and we believe that the summary of work performed under the Indian Council Act, which is appended to this despatch, will serve to show that we have made every endeavour to carry Lord Salisbury's views on this point into practice. Laws which apply to the Punjab, however, may with advantage be passed at Simla or some other convenient local centre: and, in furtherance of this policy, we intend to hold a legislative session at Delhi or elsewhere



in the Punjab in the autumn of this year to pass through Council two important Bills relating to that Province. We otherwise advocate the principle that Simla should be the place for preparing measures, and Calcutta for passing them into law, when no clear advantage is to be gained by passing them at a Council held in the Province to which the measures relate. But for these purposes a three months' session in Calcutta is ordinarily sufficient, regard being had to the fact that the great Codes have all been passed, that there are local Legislative Councils at Madras, Bombay, Calcutta and Allahabad, and that the legislative work in our Council for the next few years, at all events, is likely to consist rather in introducing judicious amendments in existing Statutes than in originating great projects of law."

*The five classes of legislative business which alone, except in cases of great urgency, ought to be taken up in Simla were thus summarised in paragraph 18 of this despatch :—*

- (i) the passing of purely local laws ;
- (ii) the gaining of a stage in important measures when discussion in Council is not immediately required ;
- (iii) the passing of Bills which, having been settled after full discussion in Calcutta, are passed without any alteration in substance ;
- (iv) the passing of petty measures which could neither excite nor be improved by discussion ; and
- (v) the passing of Consolidation Bill and Bills repealing obsolete enactments.

*Approval of these views was finally expressed in paragraph 7 of the despatch from the Secretary of State (Lord Cross), No. 116 (Public), dated the 25th October, 1888,—see Home Department's Proceedings (Public), April, 1887, Nos. 113 to 129, and February, 1889, Nos. 214 to 218.*

## APPENDIX V.

DESPATCH TO THE SECRETARY OF STATE ON THE SUBJECT OF  
THE REVISED INSTRUCTIONS TO LOCAL GOVERNMENTS  
REGARDING LEGISLATION IN LOCAL COUNCILS.

No. 22 of 1898.

To

THE RIGHT HON'BLE LORD GEORGE F. HAMILTON,  
Her Majesty's Secretary of State for India.

*Simla, the 1st September, 1898.*

MY LORD,

IN Your Lordship's despatch No. 33 (Legislative), dated the 22nd October, 1896, certain observations were made regarding delays on our part in dealing with proposals for legislation in local Councils, and we were asked to issue orders laying down a limit of time within which any intimation by us of doubt or disapproval should be made, the Local Government concerned being entitled, on the expiration of that period without any intimation being received to assume that their measure is approved.

2. We have given this question our careful consideration, and the conclusion at which we have arrived is that we ought to bind ourselves to intimate, within the interval of two months which is allowed to Your Lordship in the same connection, any objections entertained by us to the introduction of a proposed Bill in a subordinate Council, and that, if no communication is received before that limit is passed, it may be assumed by Local Governments that we, as well as Your Lordship, have no present intention of interfering. Where the law requires the previous sanction of the Governor General, it is clear that no such assumption can lawfully be made; but we think that, in cases in which the Government of India are asked to approve of the penal clauses of a Bill, as suggested in Sir Charles Wood's despatch No. 35 (Legislative), dated the 1st December 1862,\* we may promise a reply within the shorter period of one month and that Local Governments may take it that penal clauses are sanctioned, if not disallowed within that period.

Interval to  
be allowed to  
Government  
of India for  
consideration  
of Bills of  
local  
Councils.

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\* See *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, p. 216, and App. II, ante.

Revision of  
instructions  
on the  
subject.

3. We propose, therefore, to issue orders on these lines and in framing them we have taken the opportunity to re-cast and subject to general revision the existing *Instructions to local Governments*, which were drawn up in 1888 and were forwarded to the India Office with our despatch No. 22, dated the 25th August of that year. These *Instructions* have proved unsatisfactory in practice, as they involve a somewhat complicated procedure under which different Departments of the Government of India have to be addressed at different stages in connection with the introduction in, and the passing of a Bill through, a local Council. A copy of the new *Instructions*,\* which we intend, if Your Lordship raises no objection,† to issue on the 1st October next, is forwarded herewith. It will be observed that they will allow considerable latitude to Local Governments in the matter of proceeding with legislation; but we believe that there is nothing in them contrary to the spirit of the orders contained in Lord Salisbury's despatch No. 9 (Legislative), dated the 31st March, 1874,‡ and in any case we think that, in these days of enlarged and more representative Councils, it is desirable to give a large measure of discretion to Local Governments, trusting to their knowledge of the Governor General's power of withholding his assent and Her Majesty's power of disallowance to prevent such discretion being abused.

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\* See *ante*.

† No objection was raised, and approval was definitely expressed by the Secretary of State (Lord George Hamilton) in his despatch No. 32 (Legislative), dated the 20th October, 1898.

‡ See *Selection of Papers relating to the Constitution and Functions of the Indian Legislative Councils*, p. 180.

## APPENDIX VI.

LETTERS TO LOCAL GOVERNMENTS REGARDING INSTRUCTIONS  
FOR LEGISLATION IN LOCAL COUNCILS.

Nos. 1481—1482.

From

J. M. MACPHERSON, Esq., C.S.I.,

Secretary to the Government of India,

Legislative Department,

To

THE GOVERNMENTS OF MADRAS AND BOMBAY.

*Simla, the 6th October, 1898.*

SIR,

The existing instructions regarding legislation in local Councils have recently been under the consideration of the Government of India and subjected to revision, and I am now directed to forward a copy of the revised instructions,\* and to request that, with the permission of the Governor in Council, they may henceforth be observed in supersession of those previously issued.

2. I am also to request that, in supersession of existing orders, the following number of copies† of the Proceedings of Council, of Acts, and of Bills and connected papers, may in future be sent to this Department for record and for transmission to the Secretary of State, namely:—

	No. of copies.
Of the Proceedings of Council for office files	12
Of Acts for office files	46
Of Bills and connected papers submitted to the Government of India in accordance with the revised instructions	25‡
Bill as introduced	
Statement of Objects and Reasons.	
Report of Select Committee (if any).	
Amended Bill (if any).	
Papers relative to the Bill.	
Bill as passed.	
Extracts from Proceedings of Council relating to the Bill in its several stages (the dates of the meetings being mentioned in the forwarding letter).	

3. In the case of Bills submitted for the assent of the Governor General under section 40 of the Indian Councils Acts, 1861 (24 & 25 Vict., c. 67), § 25 copies of each of the papers specified on the margin should in each instance be furnished.

\* See *ante*† That is to say, spare copies—see r. 2 of the *Instructions*, *ante*, p. 123, and Legislative Department's C. R. No. 30 of 1893.

‡ The number has been raised to 30, 9 copies being required for the Secretary of State. See Legislative Department's Letter No. 1062—3, dated the 19th July, 1900.

§ See *ante*.

4. Spare copies of Bills and connected papers should be forwarded simultaneously with a Bill, or the draft of a Bill, as the case may be, submitted under the revised instructions, but the spare copies of Reports of Select Committees and of Bills as amended in Committee should be supplied only when it is found necessary to proceed under rule 7.

5. Copies of communications to the Executive Departments of the Government of India of the kind referred to in rule 1 (2) of the revised instructions need not be sent to this Department.

6. It will be observed that these instructions leave to the Local Government more discretion than hitherto in connection with both the initiation of legislation and the conduct of legislative measures during their progress through the local Council. The Government of India have no doubt that this discretion will be exercised with care so as to obviate, as far as possible, all necessity for interference in the later stages by either the Governor General or Her Majesty in exercise of the powers conferred by sections 40 and 41, respectively, of the Statute of 1861.\* The new rules will also limit the time within which any objections on the part of the Government of India to local legislation are to be intimated; and, finally, it is hoped that they will simplify matters by requiring correspondence which has had heretofore to be conducted with different Departments of the Government of India, to be conducted with the Legislative Department alone.

Nos. 1483-1486.

From

J. M. MACPHERSON, Esq., C.S.I.,  
Secretary to the Government of India,  
Legislative Department,

To

THE GOVERNMENTS OF BENGAL, THE N. W.-P.  
AND OUDH, THE PUNJAB, AND BURMA.†  
*Simla, the 6th October, 1898.*

SIR,

The existing instructions regarding legislation in local Councils have recently been under the consideration of the Government of India and subjected to revision, and I am now directed to forward a copy of the revised instructions‡

\* See *ante*.

† See *ante*.

‡ For similar instructions issued to the Government of Eastern Bengal and Assam see Legislative Department's letter No. 455, dated the 6th March, 1906.

and to request that, with the permission of His Honour the Lieutenant-Governor, they may henceforth be observed in

No 908, dated the 11th March, 1897, to the Government of Bengal.	
„ 609, „ „ „ „ „	the N.-W. P. & Oudh.
„ 1141, „ 24th June, 1897, „ „ „	the Punjab.
„ 1142, „ „ „ „ „	Burma.

supersession of those issued under cover

of the letter noted on the margin.

2. I am also to request that, in supersession of existing orders, the following number of copies\* of the Proceedings of Council, of Bills and connected papers, and of Acts and connected papers, may in future be sent to this Department for record and for transmission to Her Majesty's Secretary of State, namely :—

#### Of the Proceedings of Council—

	No. of copies.
For transmission to the Secretary of State . . .	10
For the Society of Comparative Legislation, London . . .	1
For office files . . . . .	12
Of Bills and connected papers submitted to the Government of India in accordance with the revised instructions . . . . .	25†
Of Bills as introduced in Council, with statements of Objects and Reasons, and extracts from Proceedings of Council relating thereto . . . . .	25†

#### Of Acts—

For transmission to the Secretary of State . . .	60
For All Souls College, Oxford . . . . .	1
For the Society of Comparative Legislation, London . . .	1
For sale through the India Office . . . . .	10
For office files . . . . .	46

Bill as introduced.  
Statement of Objects and Reasons.  
Report of Select Committee (if any).  
Amended Bill (if any).  
Papers relative to the Bill.  
Bill as passed.  
Extracts from Proceedings of Council relating to the Bill in its several stages (the dates of the meetings being mentioned in the forwarding letter).

3. In the case of Bills submitted for the assent of the Governor General under section 40 of the Indian Councils Act, 1861 (24 and 25 Vict., c. 67), † 25 copies of each of the papers specified on the margin should in each instance be furnished.

\* See second foot-note to Appendix VI above.

† The number has been raised to 30, 9 copies being required for the Secretary of State. See Legislative Department's letter No. 1464-7, dated the 19th July, 1900.

See ante.

4. Two copies of each Act passed and of the papers connected therewith, including extracts from the Proceedings of Council relating thereto, should also be supplied for transmission to the Secretary of State.\*

5. Spare copies of Bills and connected papers should be forwarded simultaneously with a Bill or the draft of a Bill, as the case may be submitted under the revised instructions but spare copies of Reports of Select Committees and of Bills as amended in Council should be supplied only when it is found necessary to proceed under rule 7.

6. Copies of communications to the Executive Departments of the Government of India of the kind referred to in rule 1 (2) of the revised instructions need not be sent to this Department.

7. Copies of Proceedings and of Acts for transmission to the Secretary of State (including those intended for All Souls College, for the Society of Comparative Legislation in England and for sale) should be forwarded separately to this Department *at Calcutta* with a covering letter stating that they are forwarded for that purpose, the price to be fixed in the case of sale being intimated at the same time.

8. It will be observed that these instructions leave to the Local Government more discretion than hitherto in connection with both the initiation of legislation and the conduct of legislative measures during their progress through the local Council. The Government of India have no doubt that this discretion will be exercised with care so as to obviate, as far as possible, all necessity for interference in the later stages by either the Governor General or Her Majesty in exercise of the powers conferred by sections 40 and 41, respectively, of the Statute of 1861.† The new rules will also limit the time within which any objections on the part of the Government of India to local legislation are to be communicated, and, finally, it is hoped that they will simplify matters by requiring correspondence which has had heretofore to be conducted with different departments of the Government of India, to be conducted with the Legislative Department alone.

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\* That is to say, 2 copies of the Act and connected papers are to be sent for the Secretary of State after the Act has been published with the assent of the Governor General and printed in octavo. See manuscript notes to Legislative Department's A. Pros., October, 1898, Nos. 1-6.

† See *ante*.

Nos. 1691—1696.

From—H. W. C. CARNDUFF, Esq., I.C.S., Officiating Secretary to the Government of India, Legislative Department,

To—The Governments of Madras, Bombay, Bengal, the North-Western Provinces and Oudh, the Punjab and Burma.\*

*Simla, the 22nd October, 1901.*

In continuation of this Department's letters Nos. 1481—1486, dated the 6th October, 1898, I am directed to invite attention to rule 1 of the *Instructions to Local Governments regarding legislation in local Councils*, and to say that the object aimed at by the latter part of the rule has not always been appreciated. Where any legislation proposed involves a substantial question of principle, leave to introduce a Bill should not be asked for under this rule until that question has been settled in communication with the Executive Department of the Government of India to which the subject belongs; and I am to request that, if

His Excellency the Governor in Council

His Honour the Lieutenant-Governor

His Honour the Lieutenant-Governor and Chief Commissioner

sees no objection, every letter addressed to this Department and asking for leave to introduce a Bill may state explicitly—

- (1) whether or not the Executive Department of the Government of India concerned has been addressed as to the policy of the proposed measure;
- (2) if it has, what was the result; and
- (3) if it has not, why that has not been done.

Nos. 829—833.

From—J. M. MACPHERSON, Esq., C.S.I., Secretary to the Government of India, Legislative Department,

To—The Governments of Madras, Bombay, the United Provinces, the Punjab and Burma.\*

*Calcutta, the 30th March, 1905.*

Considerable inconvenience is felt by the Government of India in dealing under the *Instructions to Local Govern-*

\* Copies of these circular letters were sent to the Government of Eastern Bengal and Assam with Mr. Macpherson's letter to the Chief Secretary, No. 455, dated the 6th March, 1906.



*ments regarding legislation in local Councils* with Bills of local Councils which propose textual amendments, either numerous or complicated, or both, in prior Acts; and I am directed to request that, with the permission of His Excellency the Governor in Council, such Bills, when submitted to His Honour the Lieutenant-Governor of the Government of India, may be accompanied by a reprint of the Act affected, with the proposed amendments printed *in loco* in distinctive type, and with notes referring to the clauses of the Bill in which the several amendments are respectively proposed. This procedure has for some time been adopted by the Government of Bengal, and its general adoption by all local Councils would be a great convenience, saving much time and labour to all concerned with the passage of a Bill through Council. A copy of a reprint of the Bengal Local Self-Government Act of 1885, which was prepared by the Government of Bengal last March, is enclosed for guidance in preparing the reprints referred to above.

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## APPENDIX VII.

LETTER TO LOCAL GOVERNMENTS REGARDING THE POSITION OF  
PROVINCIAL OFFICIAL MEMBERS OF THE LEGISLATIVE  
COUNCIL OF THE GOVERNOR GENERAL.

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No. 3002—3007.

From—The Hon'ble Mr. J. M. MACPHERSON, C.S.I.,  
Secretary to the Government of India, Legisla-  
tive Department,

To—The Chief Secretary to the Government of  
Bengal.

„ The Chief Secretary to the Government of Eastern  
Bengal and Assam.

„ The Chief Secretary to the Government of the  
United Provinces.

„ The Chief Secretary to the Government of the  
Punjab.

„ The Chief Secretary to the Government of Burma.

„ The Hon'ble the Chief Commissioner of the Central  
Provinces.

*Simla, the 30th September, 1911.*

I am directed to state, for the information of  
the Lieutenant-Governor in Council  
His Honour the Lieutenant-Governor, that the Governor General in  
your information  
Council has had under consideration the question whether it  
is desirable that provincial official members of the Imperial  
Legislative Council should continue to have the same freedom  
of speech as they have enjoyed in the past in the general  
discussion of the Budget in that Council. He finds that,  
owing to the reconstitution of the Imperial Legislative  
Council in accordance with the reform scheme which involved  
a large increase in the non-official element in the Council  
and the reduction of the official majority to the lowest  
number consistent with its maintenance the situation has  
been entirely changed and that it is no longer possible to per-  
mit the official representatives to have the same latitude in  
the Budget debate as they formerly had. Provincial and  
other official members are now nominated to the Governor  
General's Council for the express purpose of supporting the  
Supreme Government and the Governor General in Council  
is of opinion that their position in regard to Budget debates

must now be considered to be the same as their position in regard to other debates where it is well settled that they are bound to support the Government unreservedly.

2. I am to express the hope that the above observations will be sufficient to indicate the views of the Government of India as to the position of provincial official members in the enlarged Imperial Legislative Council, and that it will be recognised that it would be highly impolitic as being likely to weaken the influence of the official majority which must be maintained in that Council, to permit such members to have in the Budget debate the freedom of speech which they formerly had.

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## APPENDIX VIII.

## NOTES ON LEGISLATION AFFECTING THE JURISDICTION OF THE HIGH COURTS.

Section 22 of the Indian Councils Act, 1861, (24 & 25 Vict., c. 67), gives the Governor General's Legislative Council power to make laws and regulations for, *inter alia*, "all courts of justice whatever, and for all places and things whatever within the said territories" (*i.e.*, British India), this power being subjected to certain conditions, one of which is that no law or regulation so made "shall repeal, or in any way affect, any of the provisions of any Act† passed in this present sessions of Parliament or hereafter to be passed, in any wise affecting Her Majesty's Indian territories, or the inhabitants thereof."

Power for Governor General in Council to make laws for Courts.

2. By section 9 of the Indian High Courts Act, 1861, (24 & 25 Vict., c. 104), a Chartered High Court,—

Jurisdiction of Chartered High Courts.

"shall have and exercise all such civil, criminal, admiralty and vice-admiralty, testamentary, intestate and matrimonial jurisdiction, original and appellate, and all such powers and authority for and in relation to, the administration of justice in the Presidency for which it is established, as Her Majesty may by such Letters Patent as aforesaid, grant and direct, subject, however, to such directions and limitations as to the exercise of original civil and criminal jurisdiction beyond the limits of the Presidency-towns as may be prescribed thereby; and save as by such Letters Patent may be otherwise directed and subject and without prejudice to the legislative powers in relation to the matters aforesaid of the Governor General of India in Council, the High Court to be established in each Presidency shall have and exercise all jurisdiction and every power and authority whatsoever in any manner vested in any of the Courts in the same Presidency abolished under this Act‡ at the time of the abolition of such last mentioned Courts.

3. The Indian High Courts Act, 1865 (28 and 29 Vict., c. 15), under which the Letters Patent of the 28th December of that year were issued, concludes with the following section:—

Special saving of legislative powers of Governor General in Council.

"6. Nothing in this Act contained shall interfere with the powers of the Governor General in Council at meetings for the purpose of making laws and regulations."

4. Section 44 of the Letters Patent themselves ordains and declares that—

Letters Patent of 1865, s. 44.

"all the provisions of these our Letters Patent are subject to the legislative powers of the Governor General in Council exercised at

\*See *ante*.

†As to these words the *Queen v. Meares* cited *ante*.

‡That is to say, the Supreme and Sadr Courts—see s. 8 of the Statute.

meetings for the purpose of making laws and regulations, and also of the Governor General in cases of emergency under the provisions of an Act of the twenty-fourth and twenty-fifth years of Our Reign, Chapter sixty-seven,\* and may be in all respects amended and altered thereby."

Leading  
Indian case  
on legislative  
powers of  
Governor  
General in  
Council.

5. The power of the Governor General's Council to legislate so as to affect the jurisdiction of any of the Chartered High Courts is, therefore, complete and the decision of the Privy Council in 1878 in *Empress v. Burah* (I. L. R. 4 Cal. 172 ; 1 C. L. R. 197) has removed all doubt as to the extent and nature of that power. The following extracts from the judgment delivered by Lord Selborne in that case are worth reproducing:—

"Now it appears to Their Lordships, from the express terms of the Act 24 & 25 Vict., c. 104, that (unless there should be anything to the contrary in the Letters Patent under which the High Court is established) the exercise of jurisdiction in any part of Her Majesty's Indian territories by the High Courts was meant to be subject to, and not exclusive of, the general legislative power of the Governor General in Council as to all Courts of Justice whatever.

"The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits, which circumscribe these powers. But, when acting within these limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have, plenary power of legislation, as large, and of the same nature, as those of Parliament itself. The established Courts of Justice, when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question; and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it), it is not for any Court of Justice to inquire further, or to enlarge constructively those conditions and restrictions.

"Where plenary powers of legislation exist as to particular subjects, whether in any Imperial or in a Provincial Legislature, they may (in Their Lordships' judgment) be well exercised either absolutely or conditionally. Legislation, conditional on the use of particular powers or on the exercise of a limited discretion entrusted by the Legislature to persons in whom it places confidence, is no uncommon thing, and, in many circumstances, it may be highly convenient. The British Statute-book abounds with examples of it: and it cannot be supposed that the Imperial Parliament did not, when constituting the Indian Legislature, contemplate this kind of conditional legislation as within the scope of the legislative powers which it from time to time conferred. It certainly used no words to exclude it."

Chartered  
High Court's  
superintend-  
ence.

6. Section 15 of the Indian High Courts Act, 1861, gives each of the Chartered High Courts—

"superintendence over all Courts which may be subject to its appellate jurisdiction."

\*This reference is to ordinances made and promulgated by the Governor General under s. 23 of the Indian Council Act, 1861, *ante*.

7. Section 16 of the Letters Patent of 1865 ordains that the High Court—

“shall be a Court of appeal from the Civil Courts of the \* \* \* Presidency \* \* \* and from all other Courts subject to its superintendence, and shall exercise appellate jurisdiction in such cases as are subject to appeal to the said High Court by virtue of any laws or regulations now in force.”

Chartered  
High Court's  
appellate  
powers.

8. Section 42 of the Indian Councils Act, 1961 (24 & 25 Vict., c. 67),\* debars the local Legislature of any Presidency from—

Restriction  
on local legis-  
latures.

“making any laws or regulations which shall in any way affect any of the provisions of this Act, or of any other Act of Parliament in force or hereafter to be in force in such Presidency.”

But by section 5 of the Indian Councils Act, 1892 (55 & 56) Vict., c. 141,—†

“the local legislature of any province in India may, from time to time, by Acts passed under and subject to the provisions of the Indian Council Act, 1861, and with the previous sanction of the Governor General but not otherwise repeal or amend as to that province any law or regulation made either before or after the passing of this Act by any authority in India other than the local Legislature.”

9. It has been argued † that section 16 of the Letters Patent above quoted gives a right of appeal to the High Court, say, at Fort William, from every decision or order passed under any law whatsoever in force by any Court in the Lower Provinces, whether such law expressly provides such an appeal or not, and however such latter Court may have been established. Thus, when the Governor General's Legislative Council by passing the Bengal Tenancy Act, 1885 (VIII of 1885), constituted the Court of a Special Judge to hear appeals from the decisions of Revenue officers, a second appeal would, in the absence of an express provision to the contrary, lie to the Calcutta High Court from every appellate order of a Special Judge. The Act of 1885, s. 108, in terms allows such a second appeal only in certain cases; but, if that section were repealed, an appeal would lie in all cases, and it would be beyond the competence of the Bengal Council to limit that appeal by re-enacting the provisions of the section.

Agreement  
as to general  
right of  
appeal to  
Chartered  
High Court.

10. Now, the accepted principle seems to be—see Wilberforce's *Statute Law*, at p. 43—that there is never a right of appeal from an order passed in exercise of a statutory power unless such right is expressly conferred and that such right cannot be conferred indirectly or by mere implication. And there appears to be very high authority in support of this view.

No right of  
appeal unless  
expressly  
conferred.

\*See ante.

†See ante.

‡By the Bengal Government and Advocate-General in connection with the Bill for the amendment of Act VIII of 1885, introduced in the Bengal Council in 1898.

Leading  
English  
cases.

11. In *The King v. Hanson* (1821), 4 B. & Ald., at p. 521, Abbott, C. J., afterwards Lord Tenterden, said :—

“The rule of law is, that, although a certiorari lies unless expressly taken away, yet an appeal does not lie, unless expressly given by statute”

This decision was relied upon by the learned Judges in *The Queen v. Stock* (1838), A. & E., 405. In this case one Statute took power to issue an order in the form and the manner prescribed by another Statute. The other Statute referred to contained a schedule which gave a form stating that the order contemplated by it should be “enrolled at sessions, *unless, upon an appeal against the same to be then made, it be otherwise determined;*” and the third section expressly provided an appeal from orders made under it. It was held that the one Statute, although it incorporated the form of notice in the other, did not thereby give a right of appeal because a right of appeal cannot be given by implication. Lord Denman, C.J., in giving his opinion said :—

“The reason why a power of appeal ought not to be implied is that the appeal brings a new set of parties into action, and it is necessary that the persons to be affected and the machinery to be employed should be distinctly pointed out.”

Littledale, J., followed, accepted the dictum in *The King v. Hanson*; Patterson, J., referred to that dictum as “clear law”; and Williams J. said :—

“There are innumerable instances where an appeal is given in terms; but no cases has been mentioned in which it has been given by implication.”

In *Attorney-General v. Sellem* (1864), 10 H. L. Cas. 704, 10 Jur. N. S. 446, and 10 L. T. 434, the House of Lords held that the creation of a new right of appeal required legislative authority, and that neither the inferior nor the superior tribunal, nor both combined, could create such a right, it being essentially one of the limitation and of the extension of jurisdiction. Lord Chancellor Westbury expressed himself almost in these terms, and Lord St. Leonards said :—

“It is clearly laid down that no right of appeal can be given except by express words;”

but added that, “to create such a right, it is not necessary to use the word ‘appeal,’ but some clear equivalent term must be used.” Lord Cranworth and Lord Wensleydale were less decided but the latter remarked that the authorities amounted to this,—

“That an appeal cannot be given by implication, which is, in truth, that however much you may be satisfied that the Legislature must have intended to give it, it is not enough unless there are words to give it.”

12. In view of this principle, it would seem that section 16 of the Letters Patent is not, *per se*, sufficient to give the universal right of appeal claimed, and that all that it does is to make the High Court a Court of Appeal in every case which was in 1865 expressly declared by law to be subject to appeal to it. How the High Court can claim to be, by virtue of that provision alone, a Court of Appeal from the decisions of a Court not in existence till thirty years later, it is difficult to understand.

Conclusion  
as to general  
right of  
appeal.

13. Again, the opinion has been expressed\* that, while, as is clear, the Governor General's Councils can extend (as well as limit) the jurisdiction of a Chartered High Court, no local Legislative can either extend or limit it. The word "affect" in section 2 of the Statute of 1861† has, however, been construed to mean "affect in *malam partem*, and a little reflection will show that any other construction would lead to absurd results. There are many Acts, of Parliament passed since the Indian Councils Act, 1861, which apply to the whole of Her Majesty's dominions, and, if a narrower construction were put upon the words, the functions of the Indian Legislature would be circumscribed to an extent which cannot possibly have been intended. It is believed, then, that there is nothing to prevent a local Legislature from conferring extended jurisdiction on a Chartered High Court.‡

Meaning of  
"affect" in  
Indian Coun-  
cils Act, 1861.

14. Next, it would seem\* that a local Legislature, with the previous sanction of the Governor General given under section 5 of the Statute of 1892,§ is competent to take away from a Chartered High Court jurisdiction which it had not when the Indian Councils Act of 1861 was passed, and which has since been conferred upon it by an Act of the Governor General's Council. Thus, the Bengal Council is competent, with the Governor General's previous sanction, to repeal section 108 (2) of the Bengal Tenancy Act, 1885.

Local  
Legislature  
may affect  
jurisdiction  
conferred by  
Indian  
legislation.

15. The general question of the limits of the power of a local Legislature to affect the jurisdiction of a Chartered High Court has been discussed in several leading cases. In *Premshankar Raghunathji v. Government of Bombay*, (1870), 8 Bom. H. C. Rep., A. C. J., at p. 195, it was argued that the local Legislature could not pass Bombay Act VII of 1863, because it affected the jurisdiction of the High Court on its Appellate Side, which could withdraw suits from the Mufassal Courts, and to which in most cases

Leading  
Indian cases  
on powers of  
local Legis-  
lative.

\*See foot-note to 9, above.

†See *ante*; and cf. s. 22 of the Statute of 1861 and the notes thereto, *ante*.

‡But see the recent case of *Hari v. Secretary of State for India* (1903), 1. L. R. 27 Bom. 424.

§See *ante*.



there was a right of appeal. The following extracts are taken from the Judgment of the Court (Westropp, C. J., and West, J.) :—

“The authorities cited afford no effective support to the conclusions that the local Legislature is debarred, by the mere circumstance of its dependence, from making laws for the Mufassal Courts subsisting, nor by any charter from the Crown, but by the creation and protection of the Local Government itself. A dependent Government can make laws, for all purposes, consistent with the laws of the dominant country applicable to the dependency. \* \* \*

It cannot be said that the regulation of the Civil Courts and their powers is not an element of the peace and good government of this Presidency; and when the Local Government found it consistent with its policy to limit the powers of the Civil Courts in the case of service lands, it was quite within its competence to make such modifications of the laws previously in force as were necessary for that purpose. It was pressed on us, indeed, that the High Courts could withdraw to itself civil suits instituted in the Mufassal Courts if it saw fit; that an appeal to it lies in all cases tried originally by a District Judge; and that thus the Act of the Bombay Legislature (putting the District Judge's interpretation on its clauses) goes directly to deprive the High Court of a jurisdiction conferred on it by the Statute and Letters Patent constituting the Court; and in one sense there is some force in this argument. The Act, no doubt, removes the possibility of some contingencies arising, on the happening of which this Court might exercise its powers on the Original Side or in hearing the appeal. But we do not think that this operation of the Act can reasonably be held to affect the provisions of the Statute constituting the High Court in the sense intended by the Legislature. Every ordinary law passed by the Governor in Council, if it is to be effectual, must be made by some sanction. That sanction must be enforced by the Courts subject to the appellate and superintending authority of the High Court. Thus, the passing of such a law necessarily adds to the jurisdiction of this Court in the sense of the number of subjects to which its judicial authority may possibly be extended. Conversely, every repealing Act diminishes its jurisdiction in a similar sense. Are the Acts, therefore, void? Such a conclusion completely paralyzing the local Legislature, would obviously defeat, not promote, the purposes of the Imperial Parliament. The provisions of the Statute must plainly receive a more liberal construction—one liberal enough to admit of a local Legislature extending or restricting the powers of the Courts, its own creatures, even though the possible occasions for the exercise of this Court's jurisdiction may thus indirectly be increased or diminished in number.”

Again, in *The Collector of Thana v. Bhaskar Mahadev Sheth*, I. L. R. 8 Bom. 264, the Bombay High Court (West and Nanabhai Haridas, JJ.) said :—

“The objection that the Bombay Government could not legislate so as to bind this Court by a certificate of a Collector under section 1 of Bombay Act III of 1874, is in one sense valid, while in another it is not. The jurisdiction of the High Court rests on the Statute 24 & 25 Vict., c. 104, and the Letters Patent issued under that Statute. The legislative power of the Local Government rests on 24 & 25 Vict., c. 67, sections 42 and 43.\* Under these it cannot interfere with any Act of Parliament. The Statute constituting this High Court and

\*See ante.

the Letters Patent give to the Court such jurisdiction as was possessed by the late Supreme and Sadr Courts, together with a general power of appeal and superintendence over the Civil Courts of the Presidency of Bombay.\* Any Act, therefore, of the local Legislature which should propose to cut down this jurisdiction would so far be *ultra vires* and inoperative.

"But, then, it is to be remembered that this restriction of the one authority by the other relates only to matters of jurisdiction—that is, of the exercise of the judicial functions and matters ancillary to this. Granting the existence of any particular law, the mode in which it is to be interpreted, the jural relations it creates, the duties it imposes, and the way in which these are to be enforced—all such questions have to be determined by the High Court, and any attempt by the local Legislature to control it in the exercise of those functions would be simply abortive. But a different proposition is stated when it is said that, because in a given state of the law this Court may establish particular relations and issue particular commands which must be obeyed, that state of the law cannot be altered because the range of operation of the Court's powers will be altered at the same time. Such a construction of the Statutes, as pointed out in the case of *Premshankar Raghunathji v. The Government of Bombay*† would make legislation by the Local Government virtually impossible. It is plain of reflection that jurisdiction relates to authority in ascertaining and giving effect to the law as it is; and as the substantive law changes, while the jurisdictional power remains constant, the actual result must be variable. Thus, legislation on the rights and obligations of its subjects by the Bombay Government in no way necessarily infringes on the authority of the High Court, unless the powers of the latter in dealing with the law, when made, are in same way affected. \* \* \* \* \* This Court, in exercising its appellate jurisdiction, is bound to administer the law as it subsists in the subordinate Courts."

16. As regards local Legislatures, Sir Courtenay Ilbert, Sir C. Ilbert's  
in a note dated the 3rd February, 1883,‡ thus summed up summary.

the position :—

"I think it may be taken as settled—

- (a) that a local Legislature cannot take away any of the jurisdictions conferred on a High Court by the High Court's Act and the Letters Patent ;
- (b) that an Act which merely ' removes the possibility of some contingencies arising,' on the happening of which a High Court ' might exercise its powers on the Original Side or in hearing the appeal,' in other words, which merely affects the extraordinary or appellate jurisdiction of the High Court, ought not to be construed as taking away any of the jurisdictions of the High Court. On this point I would accept the decision of the Bombay High Court (8 Bom. H. C. R., A. C., p. 195) as laying down a reasonable and convenient rule ;
- (c) that a local Legislature may deal freely with the jurisdiction of the Mufassal Courts, so far as that jurisdiction rests on an Act of the Governor General in Council passed before the Councils Act, or on an Act of the local Legislature ;

\* A foot-note here refers to " Lett. Pat., cl. 16, Stat 24 & 25 Vict., c. 104, sections 9, 15.

† 8 Bom. H. C. Rep., A. C. J., 195, above cited

‡ See the notes to Legislative Department's A. Pros., February, 1883, Nos. 126 to 133.

(d) that a local Legislature cannot repeal or alter an Act of the Governor General in Council passed since the Councils Act."

The last two clauses of this opinion must, of course, now be modified in the light of section 5 of the Indian Councils Act, 1892 (55 & 56 Vict, c.14)\*, which empowers the local Legislature of any province, with the previous sanction of the Governor General, to repeal or amend as to that province any law or regulation *made either before or after the passing* of that Statute.

Device  
barring right  
to bring a  
suit.

17. Finally, the difficulty connected with interference with the jurisdiction of the Chartered High Courts may, Mr. Arthur Phillips advised and Sir A. Hobhouse appears to have agreed, be got over by the simple device of using words to bar the right to bring a suit instead of the right to entertain and dispose of a suit when brought. See Legislative Department's A., Pros., May, 1877, Nos. 89 to 97, K.-W. In this connection, Sir C. Ilbert, in paragraph 6 of his note above quoted, say :—

"Whatever a local Bill or Act is capable of being constructed as merely taking away a right of suit generally, I would not object to it on the ground that it interferes with a jurisdiction established by a paramount authority."

H. W. C. CARNDUFF,—11-3-98.

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\* See *ante*.

## APPENDIX IX.

## FORMS.

1. Substantive appointment of Ordinary Member of Governor General's Executive Council.

2. Provisional appointment of Ordinary Member of Governor General's Executive Council.

3. Temporary appointment of Ordinary Member of Governor General's Executive Council.

3-A. Appointment of Vice President of the Council of the Governor General.

4. Grant of leave to Ordinary Member of Governor General's Executive Council.

5. Order appointing place for assembling of Governor General's Executive Council

6. Order appointing time and place for assembling of Governor General's Legislative Council.

7. Nomination of Additional Member of Governor General's Legislative Council.

8. Publication of election of Additional Member of Governor General's Legislative Council.

9. Resignation of Additional Member of Governor General's Legislative Council.

10. Summons issued to Members at beginning of each Session of Governor General's Legislative Council.

11. Passing of law by Governor General's Legislative Council and assent of Governor General thereto.

12. Passing of law by Local Legislative Council and assent of Governor (or Lieutenant-Governor) and of Governor-General thereto.

13. Notification making and promulgating an Ordinance under section 23 of the Indian Councils Act, 1861.

14. Proclamation establishing new local Legislative Council.

14A. Proclamation constituting Executive Council of a Lieutenant-Governor.

14B. Appointment of Members of Executive Council of a Lieutenant-Governor.

15. Notification publishing a Regulation made under the Government of India Act, 1870.

16. Report of Select Committee.
17. Journal of Proceedings of Governor General's Legislative Council.
18. Full report of Proceedings of Governor General's Legislative Council.
19. Statement regarding the translation and publication by Local Governments of the Acts of the Governor General's Legislative Council.
20. List of Legislative Business pending in Governor General's Legislative Council.

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No. 1\*

*Substantive appointment of Ordinary Member of Governor General's Executive Council.*

A vacancy having occurred in the office of an Ordinary Member of the Council of the Governor General of India by [the appointment of the Honourable Sir A. B. to the office of Lieutenant-Governor of \_\_\_\_\_, or as the case may be] His Majesty the King, Emperor of India,† has been graciously pleased to appoint Mr. C. D. to be an Ordinary Member of the Council of the Governor General of India.

The Honourable Mr. C. D. has on this day taken upon himself the execution of his office under the usual salute.

Y. Z.,

*Secretary to the Government of India.*

*(Another form.)*

A vacancy having occurred in the office of an Ordinary Member of the Council of the Governor General of India by the death of the Honourable Sir A. B., and the Honourable Sir C. D., who was acting temporarily as an Ordinary Member of the said Council, having been appointed by His

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\* Cf. Home Department's Notification No. 271, dated the 9th April, 1898, *Gazette of India*, 1898, Pt. I., p. 379. See s. 3 of the Indian Councils Act, 1861, *ante*.

† His Majesty should be so styled in all instruments, "save and except all Charters, Commissions, Letters Patent, Grants, Writs, Appointments, and other like instruments not extending in their operation beyond the United Kingdom." See the Royal Titles Act, 1876 (39 Vict., c. 10), and Proclamation issued thereunder in the *Gazette of India*, 1877, Pt. I. p. 16.

In pursuance of a further proclamation issued under the Royal Titles Act 1901 (1 Edw. 7, c. 15), His Majesty's full style and titles are "Edward the Seventh, by the Grace of God, of the United Kingdom and Ireland and of the British Dominions beyond the Seas—King, Defender of the Faith, and Emperor of India."

Majesty the King-Emperor of India, an Ordinary Member of the said council, it is hereby notified that the Hon'ble Sir C. D., assumed the permanent office of an Ordinary Member of the said Council with effect from the 2nd March, 1912.

Y. Z.,

*Secretary to the Government of India.*

No. 2.\*

*Provisional appointment of Ordinary Member of Governor General's Executive Council.*

Mr. A. B. having under section 5 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67),† been appointed by His Majesty the King, Emperor of India, to be a Provisional Member of the Council of the Governor General of India and a vacancy having been caused in the said Council by [the departure on leave of absence under Medical certificate of the Honourable Mr. C. D.], the Honourable Mr. A. B. has on this day taken upon himself the execution of his office under the usual salute.

Y. Z.,

*Secretary to the Government of India.*

No. 3.‡

*Temporary appointment of Ordinary Member of Governor General's Executive Council.*

A temporary vacancy having occurred in the office of an Ordinary Member of the Council of the Governor General by [the departure on leave of the Hon'ble Mr. A. B.], the Governor General in Council is pleased, in exercise of the power conferred by section 27 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67)§ to appoint Mr. C. D. to act temporarily as an Ordinary Member of the Council of the Governor General.

The Hon'ble Mr. C. D. has on this day taken upon himself the execution of the office under the usual salute.

Y. Z.,

*Secretary to the Government of India.*

\* Cf. Home, Revenue, and Agricultural Department's Notification No. 1130, dated the 12th July, 1890, *Gazette of India*, 1890, Pt. I, p. 362

† See *ante*.

‡ Cf. Home Department's Notification No. 761, dated the 18th October, 1897, *Gazette of India*, 1897, Pt. I, p. 953.

§ See *ante*.

## No. 3 A\*

*Appointment of Vice-President of the Council of the Governor General.*

In exercise of the power conferred by section 4 of the Indian Council's Act, 1909 (9 Edw., D. 7, c. 4), the Governor General is pleased to appoint the Hon'ble

, being a member of his Council, to be  
 Vice-President thereof  
 thereof in place of \_\_\_\_\_, deceased  
 thereof in place of \_\_\_\_\_ who has vacated that office.

Y. Z.,

*Secretary to the Government of India.*

## No. 4.†

*Grant of leave to Ordinary Member of Governor General's Executive Council.*

In exercise of the power conferred by section 26 of the Indian Council's Act, 1861 (24 & 25 Vict., c. 67),‡ the Governor General in Council is pleased to grant to the Hon'ble Mr. A. B., an Ordinary Member of the Council of the Governor General, leave of absence under medical certificate for a period of \_\_\_\_\_ months, with effect from the instant, or any subsequent date on which he may avail himself of it.

Y. Z.,

*Secretary to the Government of India.*

## No. 5.§

*Order appointing place for assembling of Governor General's Executive Council.*

In exercise of the power conferred by section 9 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67),|| the Governor General in Council is pleased to direct that the Council of the Governor General shall assemble at \_\_\_\_\_ in the territories under the administration of the

Y. Z.,

*Secretary to the Government of India.*

\* Cf. Legislative Department's Notification No. 9, dated 26th January 1912, Government of India, 1912, Part I, p. 72.

† Cf. Home Department's Notification No. 735, dated the 8th October 1897, *Gazette of India*, 1897, Pt. I, p. 911.

‡ See *ante*.

§ Cf. Home Department's Notification, No. 2464, dated the 26th November 1897, *Gazette of India*, 1897, Pt. I, p. 1057.

See *ante*.

## No. 6.\*

*Order appointing time and place for assembling of Governor General's Legislative Council.*

In exercise of the power conferred by section 17 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67),† the Governor General in Council is pleased to appoint       day, the       , 190       , at 11 A.M., as the time, and the Council Chamber in the       as the place for a meeting of the Council of the Governor General for the purpose of making Laws and Regulations.

Y. Z.,

*Secretary to the Government of India.*

## No. 7.‡

*Nomination of Additional Member of Governor General's Legislative Council.*

In exercise of the power conferred by section 10 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67),§ as modified by the Indian Councils Act, 1909 (9 Edw. 7 c. 4), and in pursuance of the provisions of Regulation I. B of the Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor General and the Governor General is pleased to nominate Mr. A. B. being a non-official (or, as the case may be) to be an Additional Member of the said Council.

Y. Z.,

*Secretary to the Government of India.*

- (Another form, to fill a casual vacancy.)

In exercise of the power conferred by section 10 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), as modified by the Indian Councils Act, 1909 (9 Edw. 7. c. 4), and in pursuance of the provisions of Regulation XI (2) of the Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor General, the Governor General is pleased to nominate Mr. A. B., being an official, to be an Additional Member of the said Council, *vice* Sir C. D., resigned.

Y. Z.,

*Secretary to the Government of India.*


---

\* Cf. Legislative Department's Notification No. 6, dated the 22nd June 1898, *Gazette of India*, 1898, Pt. I, p. 677.

† See ante.

‡ Cf. Legislative Department's Notification, No. 7, dated the 6th January 1912, *Gazette of India*, 1912, Pt. I, p. 30.

§ See ante



(Another form.)

In exercise of the power conferred by section 10 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), as modified, by the Indian Councils Act, 1909 (9 Edw., 7, c. 4) and in pursuance of the provisions of Regulation I. B. (b) of the Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor General, the Governor General is pleased to nominate the following non-official persons, who have been selected from the classes mentioned opposite their respective names, to be Additional Members of the said Council :—

Names.	Classes.
A. B.	The Muhammadan Community in the Punjab.
C. D.	The landholders in the Punjab.

Y. Z.,

*Secretary to the Government of India.*

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No. 8.\*

*Publication of election of Additional Member of Governor General's Legislative Council.*

In accordance with the provisions of the Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor General the names of the following candidates, elected to be Additional Members of the Council by the electorates mentioned opposite their respective names, are hereby published :—

Names of candidates.	Electorates.
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Y. Z.,

*Secretary to the Government of India.*

(Another form.)

In pursuance of the provisions of Regulation XI (1) of the Regulations for the nomination and election of Additional Members of the Legislative Council of the Governor General, the non-official Members of the Council of the Lieutenant-Governor of the Punjab have elected A. B. to be an Additional Member of the said Council, *vice* the Hon'ble C. D., deceased.

Y. Z.,

*Secretary to the Government of India.*

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\* Cf Legislative Department's Notification No.      dated the      *Gazette of India*, Pt. I.

No. 9.\*

*Resignation of Additional Member of Governor General's  
Legislative Council.*

The Governor General is pleased to accept the resignation by the Hon'ble Mr. A. B. of his office of Additional Member of the Legislative Council of the Governor General.

Y. Z.,

*Secretary to the Government of India.*

No. 10.

*Summons issued to Members at beginning of each Session  
of the Governor General's Legislative Council.*

No. .

GOVERNMENT OF INDIA.

## LEGISLATIVE DEPARTMENT.

, the 191 .

The Governor General in Council having in exercise of the power conferred by section 17 of the Indian Councils Act, 1861 (24 & 25 Vict, c. 67), † appointed day, the , 191 , at 11 A.M., as the time, and the Council Chamber in the as the place, for a meeting of the Council of the Governor General for the purpose of making Laws and Regulations,

Your Excellency is

Your Honour is

hereby summoned to the said meeting at the time and place aforesaid.

By order of the Governor General in Council.

Y. Z.,

*Secretary to the Government of India.*

No. 11.‡

*Passing of law by the Governor General's Legislative  
Council and assent of Governor General thereto.***[Endorsed at end of Bill as passed.]**

This Bill was passed at a meeting of the Council of the

\* Cf. Legislative Department's Notification No. 2, dated the 4th January 1912, *Gazette of India*, 1912, Pt. I, p. 2; and see s. 12 of the Indian Councils Act, 1861, *ante*.

† See *ante*.

‡ See s. 20 of the Indian Councils Act, 1861, *ante*.

Governor General of India for the purpose of making Laws  
and Regulations on the day of 191 .

E.,

*President.*

I assent to this Bill.

E.,

*Viceroy and Governor General.*

*The* , 191 .

(An authentic copy.)

Y. Z.,

*Secretary to the Government of India,*

*Legislative Department.*

No. 12.\*

*Passing of law by Local Legislative Council and assent of  
Governor (or Lieutenant-Governor) and of Governor  
General thereto.*

**[Endorsed at end of Bill as passed.]**

This Bill was passed by the Council of the [Lieutenant-]  
Governor of at a meeting held for the purpose of  
making Laws and Regulations on the , 191 .

A. B.

*President.*

I assent to this Bill.

A. B.,

[*Lieutenant-*] *Governor.*

*The* , 191 .

(True copy.)

C. D.,

*Assistant Secretary to the Government of India,*

*Legislative Department.*

I assent to this Law.

E.,

*Viceroy and Governor General.*

*The* , 191 .

(An authentic copy.)

Y. Z.,

*Secretary to the Government of India,*

*Legislative Department.*

\* See ss. 39 and 40 of the Indian Councils Act, 1861, ante.

## No. 13.

*Notification making and promulgating an Ordinance under section 23 of the Indian Councils Act, 1861.*

Whereas it is expedient to empower the Lieutenant-Governor of Bengal to prohibit dramatic performances which are scandalous, defamatory, seditious, obscene or otherwise prejudicial to the public interest ;

And whereas, pending the consideration and enactment by the Governor General in Council of a law conferring such power, it is expedient to confer the same by an Ordinance under section 23 of the Indian Councils Act [1861]\*.

24 & 25 Vict.,  
c. 67.

In exercise of the power vested in him by the said section [His Excellency]† the Governor General is pleased to make and promulgate the following Ordinance :—

[Here follows the Ordinance.]‡

Y. Z.,

*Secretary to the Government of India.*

No. 14.§

*Proclamation establishing new local Legislative Council.*

(Old form)

The following proclamation, to which the sanction of His Majesty the King, Emperor of India, has been signified by the Secretary of State in Council, as required by section 49 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67),|| is hereby published :—

## PROCLAMATION.

The Governor General is pleased to constitute the territories at present under the administration of the

to be, for the purposes of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67),¶ a pro-

\*See *ante*.

†Titles of courtesy are more properly omitted in statutory notifications.

‡Ordinance made on the 29th February, 1876—see *Gazette of India*, 1876, Pt I, p. 119. It expired in due course, and general provisions on the subject were subsequently enacted by the Dramatic Performances Act, 1876 (XIX of 1876).

§Cf. Home Department's Notification No. 309, dated the 9th April 1897, *Gazette of India*, 1897, Pt. I, p. 261. In the United Kingdom "proclamations" usually close with the words "GOD SAVE THE KING," and this form (with the addition of the word, "EMPEROR") was adopted in India in the case of the Proclamation constituting the North-West Frontier Province—see *Gazette of India*, 1901, Pt. I, p. 857.

¶See *ante*

¶¶See s. 46 of Indian Councils Act 1861, *ante*.

vince to which the provisions of that Act touching the making of laws and regulations for the peace and good government of the Presidencies of Fort St. George and Bombay shall be applicable, and further to appoint

to be the first Lieutenant-Governor of that province, with all powers and authority incident to such office.

2. The Governor General in Council is further pleased to specify the day , 191 , as the period at which the said provisions shall take effect, and as the number of Councillors whom the Lieutenant-Governor may nominate for his assistance in making laws and regulations.

Y. Z.,

*Secretary to the Government of India.*

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*(Form adopted since the passing of the Indian Councils Act, 1909)\*.*

The 22nd March, 1912.

The following proclamation, to which the sanction of His Majesty the King, Emperor of India has been signified by the Secretary of State for India in Council, is hereby published :—

### PROCLAMATION.

The Governor General is pleased to constitute the following territories, which are now subject to and included within the limits of the Presidency of Fort William in Bengal namely :—

\* \* \* \* \*

to be, for the purposes of the Indian Councils Act, 1861 (24 & 25 Vict. c. 67), a Province to which the provisions of that Act touching the making of Laws and Regulations for the peace and good government of the Presidencies of Fort Saint George and Bombay shall be applicable.

2. The Governor General is further pleased to direct that the said Province shall be called the Province of Bihar and Orissa, and to appoint the Hon'ble to be the first Lieutenant-Governor of the Province, with all powers and authority incident to that office.

3. The Governor General in Council is also pleased to specify the first day of 1912, as the time at which the application of the said provisions of the said Act to the Province of Bihar and Orissa shall take effect.

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\**Cf. Home Department's Notification No. 289, dated 22nd March, 1912.*

## No. 14-A.\*

*Proclamation constituting Executive Council of a Lieutenant-Governor.*

In exercise of the powers conferred by sub-section (1) of section 3 of the Indian Councils Act, 1909 †(9 Edw. 7, c. 4), as modified by the Government of India Act, 1912 ‡(2 and 3 Geo. 5, c. 6), the Governor General in Council, with the approval of the Secretary of State for India in Council, is pleased to issue the following Proclamation :—

## PROCLAMATION.

1. A Council shall be constituted in the Province of Bihar and Orissa with effect from the first day of August, 1912, for the purpose of assisting the Lieutenant-Governor in the executive government of the Province.

2. The number of the members of the Council shall be three, or such other number not exceeding four, as the Governor General in Council may from time to time determine.

3. (1) Two numbers of the Council shall be persons who at the time of their appointment have been in the service of the Crown in India for at least twelve years.

(2) The other member or members shall be either persons so qualified or persons who at the time of their appointment have resided in India for at least twelve years.

4. If a member is absent from illness or otherwise, the Lieutenant-Governor may, subject to the condition prescribed by sub-clause (1) of clause 3, appoint a person qualified under that clause to be a temporary member during such absence.

5. In any case which in the judgment of the Lieutenant-Governor, is of high importance and essentially affects the public interest and welfare, the Lieutenant Governor may direct that such case shall be decided in accordance with his opinion the opinion of the majority of the Council to the contrary notwithstanding.

6. (1) Where the Lieutenant-Governor makes a direction under clause 5, he shall record a statement of his reasons for making such direction, and any dissentient member may record a statement of the reasons for his dissent.

(2) A copy of every statement recorded under clause (1) of this rule shall forthwith be submitted to the Governor General.

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\**Cf.* Home Departments Notification No. 1628, dated 1st August, 1912.

† See *ante*.

‡ See *ante*.

7. Save as provided in clause 5, the opinion of the majority of the Council shall prevail; and in the case of equality of votes the Lieutenant-Governor shall have a second or casting vote.

8. If the Lieutenant-Governor is obliged to absent himself from any meeting of the Council, from indisposition or any other cause, all the functions which are exerciseable in Council by the Lieutenant-Governor shall be discharged by the Vice-President of the Council appointed under section 4 of the Indian Councils Act, 1909.

Y. Z.,

*Secretary to the Government of India.*

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No. 14-B.\*

*Appointment of Members of Executive Council of a Lieutenant-Governor.*

In exercise of the powers conferred by section 3, sub-section (4), of the Indian Councils Act, 1909 † (9 Edw. 7. c. 4), as modified by the Government of India Act, 1912 † (2 and 3 Geo. 5, c. 6), the Governor General, with the approval of His Majesty the King, Emperor of India, is pleased to appoint the following gentlemen to be Members of the Council constituted in the Province of Bihar and Orissa for the purpose of assisting the Lieutenant-Governor in the executive government of that province:—

A. B.

C. D.

E. F.

Y. Z.,

*Secretary to the Government of India.*

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No. 15.‡

*Notification publishing a Regulation made under the Government of India Act, 1870.*

Whereas by Resolution passed by the Secretary of State for India in Council on the \_\_\_\_\_ day of \_\_\_\_\_

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\* Cf. Home Department's Notification No. 1629, dated 1st August, 1912.

† See *ante*.

‡ Cf. Regulation III of 1898, *Gazette of India*, 1898, Pt. I, p. 776; also *Burma Gazette*, 1898, Pt. II, pp. 405—406. The Statute requires publication in both the *Gazette of India* and the local official Gazette—see *ante*.

Governor of A. in Council,  
Lieutenant-Governor of B.,  
Chief Commissioner of C.,

Governor of A. in Council,  
Lieutenant-Governor of B.  
Chief Commissioner of C.

And whereas the Governor General in Council has taken the draft and reasons into consideration, and has approved of the draft, and the same has received the assent of the Governor General on the \_\_\_\_\_ day of \_\_\_\_\_

190 :

In pursuance of the direction contained in the said section, the said Regulation is now published in the *Gazette of India* :

REGULATION No.      of 191 .

[Here follows the Regulation]

**Y. Z.,**

*Secretary to the Government of India.*

No. 16.†

*Report of Select Committee.*

The following report of the Select Committee on the Bill to \_\_\_\_\_ was presented to the Council of the Governor General of India for the purpose of making Laws and Regulations on the \_\_\_\_\_, 190 :—

WE, the undersigned, Members of the Select Committee  
to which the Bill to \*

*	*	*	*
*	*	*	*

Here describe in order was referred, have considered the  
the Papers to the Bill. Bill and the papers noted in the

\*Sec *ante*.

<sup>†</sup>Sec 1, 25 of the *Rules of Legislative Business*, ante, Cf. *Gazette of India*, 1898, Pt. V, p. 269.



margin, and have now the honour to submit this our Report, with the Bill as amended by us annexed thereto.

*	*	*	*
*	*	*	*
*	*	*	*

The publication ordered by the Council has been made as follows :—\*

<i>In English.</i>				
<i>Gazette.</i>				<i>Date.</i>
Gazette of India . . . .				, 191 .
Gazette . . . .				, 191 .
* * * *				* *

<i>In the Vernaculars.</i>				
<i>Province.</i>		<i>Language.</i>		<i>Date.</i>
Bengal .	{	Pengali . . . .		, 119 .
		Hindi . . . .		, 191 .
* *		*	* *	*
* *		*	* *	*

We think that the measure has [not] been so altered as to require re-publication, [and we recommend that it be passed as now amended].†

A. B.‡

C. D.

E. F.

G. H.

I. J.

*The* , 191 .

[Here follows the Bill as amended.]

Y. Z.,

*Secretary to the Government of India.*

\* See r 25 § 4, of the *Rules of Legislative Business ante*

† See, *ibid.*

‡ The practice is for the Member in charge of the Bill to sign first and for the other Members of the Select Committee to sign next in order of precedence. But it would seem more appropriate if the signature of the Law Member, who is the Chairman of every Select Committee, were to take precedence.

No. 17.\*

*Journal of Proceedings of Governor General's Legislative Council.*

*Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Act, 1861 and 1892 (24 & 25 Vict., c. 67, and 55 & 56 Vict., c. 14).*

The Council met at the Viceregal Lodge, Simla, on Friday, the 12th August, 1898.

## PRESENT :

His Excellency the Earl of Elgin, P.C., G.M.S.I., G.M.I.E., LL.D., Viceroy and Governor General of India, *presiding*.

His Excellency General Sir C. E. Nairne, K.C.B., R.A., Provisional† Commander-in-Chief in India.

The Hon'ble Sir J. Westland, K.C.S.I.

The Hon'ble‡ M. D. Chalmers.

The Hon'ble Major-General Sir E. H. H. Collen, K.C.I.E., C.B.

The Hon'ble Sir A. C. Trevor, K.C.S.I.

The Hon'ble‡ C. M. Rivaz, C.S.I.

The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.

The Hon'ble MR. RIVAZ moved that the Hon'ble Mr. Fuller be added to the Select Committees on the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces and the Bill to further amend the Central Provinces Land-Revenue Act, 1811.

The motion was put and agreed to.

The Hon'ble MR. RIVAZ moved that the Bill to make better provision for the regulation of the importation of live-stock be taken into consideration.

The motion was put and agreed to.

The Hon'ble MR. RIVAZ moved that the Bill be passed.

The motion was put and agreed to. §

The Council adjourned to Friday, the 2nd September, 1898.

ELGIN.

\* See r 36 of the *Rules of Legislative Business, an'e.* *The Journal has been discontinued.*

† The word "Provisional" should, perhaps, have been omitted. A provisional appointment confers, for the time being, all the powers, rank and emoluments enjoyed by a permanent one.

‡ The word "Mr." should have been inserted after "Hon'ble."

§ See the Live-stock Importation Act, 1898 (IX of 1898).

## No. 18.\*

*Full Report of Proceedings of Governor General's Legislative Council.*

*Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Indian Councils Acts, 1861 and 1892 (24 and 25 Vict., c. 67, and 55 and 56 Vict., c. 14).*

The Council met at the Viceregal Lodge, Simla, on Friday, the 12th August, 1898.

## PRESENT :

His Excellency the Earl of Elgin, P.C., G.M.S.I., G.M.I.E.,  
LL.D., Viceroy and Governor General of India,  
*presiding*

His Excellency General Sir C. E. Nairne, K.C.B., R.A.,  
Provisional† Commander-in-Chief in India.

The Hon'ble Sir J. Westland, K.C.S.I.

The Hon'ble‡ M. D. Chalmers.

The Hon'ble Major-General Sir E. H. H. Collen,  
K.C.I.E., C.B.

The Hon'ble Sir A. C. Trevor, K.C.S.I.

The Hon'ble‡ C. M. Rivaz, C.S.I.

The Hon'ble Rai Bahadur Pandit Suraj Kaul, C.I.E.

## CENTRAL PROVINCES TENANCY AND LAND-REVENUE ACT AMENDMENT BILLS.

The Hon'ble MR. RIVAZ moved that the Hon'ble Mr. Fuller be added to the Select Committees on the Bill to consolidate and amend the law relating to Agricultural Tenancies in the Central Provinces and the Bill to further amend the Central Provinces Land-Revenue Act, 1881.

The motion was put and agreed to.

## LIVE-STOCK IMPORTATION BILL.

The Hon'ble MR. RIVAZ moved that the Bill to make better provision for the regulation of the importation of

\*See r 37 of the *Rules of Legislative Business, ante*, and *Gazette of India*, 1893, Pt. VI, p. 363. This "full report" corresponds with the "journal" reproduced on the preceding page.

†As to the word "Provisional," see the second footnote to No. 17 *ante*.

‡See the third foot-note to No. 17 *ante*.

live-stock be taken into consideration. He said:—"As I stated in introducing the Bill on the 15th July, the proposed Act is of a very general nature, and entirely an empowering one. Whatever restrictions and prohibitions are prescribed will be dealt with by rules and notifications under the Act, which can be altered from time to time if necessary, and before such restrictions or prohibitions are brought into force all due consideration will of course be paid to the trade interests involved in the importation of horses."

The motion was put and agreed to.

The Hon'ble MR. RIVAZ moved that the Bill be passed.

The motion was put and agreed to.\*

The Council adjourned to Friday, the 2nd September, 1898.

J. M. MACPHERSON,  
*Secretary to the Government of India,*  
*Legislative Department.*

SIMLA ;

*The 12th August, 1898.* }

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No. 19.

*Statement regarding the translation and publication by Local Governments of the Acts of the Governor General's Legislative Council.*

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Nos. 1421—1431.

From—H. W. C. CARNDUFF, Esq., I.C.S.,  
*Deputy Secretary to the Government of India,*  
LEGISLATIVE DEPARTMENT,

To—LOCAL GOVERNMENTS AND ADMINISTRATIONS.

*Simla, the 18th August, 1897.*

SIR,

I am directed to request that the half-yearly† statement required for the purpose of showing when translations of Acts of the Governor General in Council are published and

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\*See the Live-stock Importation Act, 1898 (IX of 1898).

†Annual statements only are now required—see Legislative Department's letter Nos. 1030—1040, dated 14th July, 1901.

made available for use by Government officials and the public may be submitted in future in the accompanying form.

2. It is unnecessary to refer in such statements to transactions of modified editions of Acts.

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*Statement showing the dates on which translations of the Acts of the Governor General in Council affecting which were passed during the year ending on the 31st December, 19 , were published and became available for use by Government officials and the public.*

Year.	No.	Short title or subject.	Dates of publication of translations in local official Gazette.	Dates on which translations were made available for use by Government officers and for sale.	REMARKS.

## No. 20.\*

*List of Business pending in Governor General's Legislative Council.***Concise Statement showing Stage of each Bill introduced in Council and Bills for which instructions have been received.**

(N.B.—The numbers in column I correspond with the numbers in Column I of the Statement of Legislative Work pending, which should be referred to for details.)

Serial No.	Title of Bill.	Stage at which Bill is.
<i>Bills introduced in Council.</i>		
*	* * * * *	* * * * *
10	Indian Stamp Bill . . .	To be passed.
*	* * * * *	* * * * *
<i>Bills for the preparation of which instructions have been received.</i>		
*	* * * * *	* * * * *
18	Cantonments (House-accommodation) Bill.	Bill in type. File sent to Military Department on the 1898.
*	* * * * *	* * * * *

\* See r. 38, fourth, of the Rules of Legislative Business, ante.

## Statement of Legis

PART

*Bills introduced*

Serial No.	Title of Bill.	Leave given to introduce.	Introduced.	Referred to Select Committee.	Members of Select Committee.	Circulated for opinion.	TO WHOM SENT.		Due.	OPI
							For opinion and publication.	For opinion only.		
10	To consolidate and amend the Law relating to Stamps.	15th October, 1897.	15th October, 1897.	21st January, 1898.	Hon'ble Sir J. Westland, Hon'ble Mr. Chalmers, Hon'ble Joy Gobind Law, and Hon'ble Messrs. James, Nicholson and Allan Arthur.	10th October, 1897.	Madras .	...	1st January, 1898.	
							Bombay .	...		
							Bengal .	...		
							North-Western Provinces and Oudh.	...		
							Punjab .	...		
							Burma .	...		
							Central Provinces	...		
							Assam .	...		
							Coorg .	...		
							Ajmere .	...		
							British Baluchistan.	...		
							Hyderabad	...		
							High Court, Calcutta	...		

lative Work pending.

I.

in Council.

NION.	PUBLISHED.		Reminders for op- nion.	Reminders for publi- cation.	Reference to Exe- cutive Department.	Meetings of Select Committee.	Correspondence with Secretary of State.	REMARKS.
	Received.	In English.  In Vernacu- lar.						
*	*	*	*	*	*	*	*	*
Madras, 3rd and 24th February, 1898.	Madras, 16th November, 1897.	Tamil Telugu Kanarese Malayalam Hindustani	7th Ja- nuary, 1898.			21st, 22nd, 23rd, 26th Febru- ary, and 21st March, 1898	To Secre- tary of State, No. 38, dated 21st Octo- ber, 1897.	The Hon'ble Sir J. Westland. in charge.
Bombay, 24th February, 1898.	Bombay, 4th November, 1897.  Sindh, 31st November, 1897.	Marathi Gujarathi Kanarese Sindhi	27th Febr- uary, 1898.				To Secre- tary of State, No. 10, dated 24th March, 1898.	Report of Select Commit- tee pre- sented on 21st Mar- ch, 1898.
Bengal, 28th February, 1898.	Calcutta, 3rd November, 1897.	Bengali Hindi Urdu, 17th January, 1898.	18-1-98					
North-Western Provinces and Oudh, 24th January, 1898.	North-Western Provinces and Oudh, 30th October, 1897.	...						
Punjab, 17th January, 1898	Punjab, 28th October, 1897.	Urdu, 16th December, 1897.						
Burma, 31st December, 1897, and 11th January, 1898.	Burma, 13th November, 1897.	Burmese, 11th December, 1897.						
Central Pro- vinces, 3rd January, 1898.	Central Pro- vinces, 30th October, 1897.	...						
Assam, 28th January, 1898.	Assam, 13th November, 1897.	Bengali, 20th January, 1898.						
Coorg, 31st December, 1898.	Coorg, 1st Nov- ember, 1897.	Kanarese, 1st January, 1898.						
Ajmere, 14th January, 1898.	...	...						
British Balu- chistan, 20th December, 1897.	...	...						
Hyderabad, 2nd March, 1898, High Court, 10th January, 1898	...	...						



## PART II.

*Bills for the introduction of which leave has been given.\**

Serial No.	Title of Bill.	Date of publication.	REMARKS.

## PART III.

*Bills published by order of the Governor General under rule 23 of the Rules of Legislative Business.†*

Serial No.	Title of Bill.	Date of publication.	REMARKS.

\* See r. 16 of the *Rules of Legislative Business, ante*.

† See *ante*.

## PART IV.

*Bills for the preparation of which instructions have been received.*

Serial No.	Title of Bill.	From what Department.	Date of receipt.	REMARKS.
*	* * *	* * *	* *	* * *
*	* * *	* * *	* *	* * *
*	* * *	* * *	* *	* * *
18	Cantonments (House-accommodation) Bill.	Military Department.	7th January, 1898.	Bill in type. Under discussions in Executive Department.
.	* * *	* * *	* *	* * *
*	* * *	* * *	* *	* * *
*	* * *	* * *	* *	* * *

## ANNEXURE.\*

*Bills which have been prepared by the Legislative Department for other Departments unofficially, and regarding which official instructions have not been received.*

Unofficial No.	Department	Subject.	REMARKS.
* *	* *	* * *	* * * *
* *	* *	* * *	* * * *
* *	* *	* * *	* * * *
386 of 1898.	Foreign .	Foreign Jurisdiction and Extradition Bill.	Referred to Secretary of State by Foreign Depart- ment.
* *	* *	* * *	* * * *
* *	* *	* * *	* * * *
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\* This annexure is attached only to the copies supplied to the Members of the Executive Council, and is distinguished as confidential by being printed on yellow paper.

# I N D E X.

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